



AIA[®] Document B195[™] – 2008

Standard Form of Agreement Between Owner and Architect for Integrated Project Delivery

AGREEMENT made as of the tenth day of December in the year two thousand thirteen 2013

(In words, indicate day, month and year.)

BETWEEN the Owner:

(Name, legal status, address and other information)

The School District of Berkeley County, South Carolina 229 East Main Street Moncks Corner, South Carolina 29461 Phone: (843) 899-8600 Fax: (843) 899-8791

and the Architect:

(Name, legal status, address and other information)

McMillan Pazdan Smith Architecture 12-A Vanderhorst Street Charleston, South Carolina 29403 Ron G. Smith, Managing Principal Charleston
Phone: (843) 566-0771

for the following Project:

(Name, location and detailed description)

New Elementary School at Foxbank Plantation
Berkeley County School District
Berkeley County, South Carolina

for which Project the Contractor is:

(Name, legal status, address and other information)

Contract Construction, Inc. P.O. Box 269 Ballentine, South Carolina 29002-0269 Greg Hughes, President
Phone: (803) 781-7058

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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ARTICLE 1 ARCHITECT'S SERVICES AND RESPONSIBILITIES

§ 1.1 The Architect shall provide the professional services set forth in AIA Document A295™-2008 General Conditions of the Contract for Integrated Project Delivery, which is incorporated herein by reference, except as specifically indicated to be the responsibility of others. Such services shall include usual and customary civil, structural, mechanical, and electrical engineering services with compliance to SCDOE OSF Guidelines and BCSD Facility Design Guidelines and as delineated in the Architect's proposal submitted in response to RFQ#396-(13-14)

§ 1.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 1.3 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 1.4 The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost:

(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)

.1 General Liability

One Million (\$1,000,000.00) per occurrence/ One Million (\$1,000,000.00) aggregate

.2 Automobile Liability

Statutory Minimum

.3 Workers' Compensation

Statutory Minimum

.4 Professional Liability

Architect: One Million (\$1,000,000.00) per claim/ One Million (\$1,000,000.00) aggregate

Consultants: One Million (\$1,000,000.00) per claim/ One Million (\$1,000,000.00) aggregate

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§ 1.5 ADDITIONAL SERVICES

§ 1.5.1 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 1.5 shall entitle the Architect to compensation pursuant to Section 4.2 and an appropriate adjustment in the Architect's schedule.

§ 1.5.2 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information set forth in A295-2008, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement method;
- .2 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or sustainability certification programs;
- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations; except OSF/ Fire Marshal interpretations.
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital data, in a format other than previously agreed to, for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;
- .6 Preparation of design and documentation for changes the Owner requests after acceptance of the Guaranteed Maximum Price when construction costs exceed \$25,000.00.
- .7 [Number not Used]
- .8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding where a civil action has been filed in the judicial system, except where the Architect is party thereto;
- .9 [Number not Used]
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction.¹¹
See attached Exhibit "A" for Schedule of Additional Services..

§ 1.5.3 To avoid a delay on the Project after the establishment of the Guaranteed Maximum Price, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the GMP Documents or where such information is available to the Contractor from a careful study and comparison of the GMP Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 [Number not Used]
- .4 [Number not Used]
- .5 To the extent the Architect's services required by Section 1.1 are affected, providing Construction Phase services 60 days after the date of Substantial Completion of the Work.

§ 1.5.4 The Architect shall provide Construction Phase services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor
- .2 An average of bi-weekly visits to the site by the Architect over the duration of the Project during construction
- .3 Two (2) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the GMP Documents

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.4 Two (2) inspections for any portion of the Work to determine final completion

§ 1.5.5 If the services covered by this Agreement have not been completed within forty-eight (48) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated equitably in light of demonstrated additional performance costs incurred by the Architect.

ARTICLE 2 OWNER'S RESPONSIBILITIES

The Owner's responsibilities are as set forth in the accompanying A295-2008.

ARTICLE 3 COPYRIGHTS AND LICENSES

§ 3.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 3.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 3.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service for the Owner's statutory duties and purposes. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services for the Project. The license also includes the Owner's right to provide the Instruments of Service to other Architects retained by the Owner for reference and consistency purposes in preparing future Instruments of Service for the Owner's needs at the Project or other Owner projects; the use of design concepts from the Instruments of Service for future projects is not in derogation of the license provided the resulting design is sealed and issued solely under the professional license(s) of a design professional then under contract to the Owner.

§ 3.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The terms of this Section 3.3.1 shall not apply to the use of the Instruments of Service for the Project if the Owner rightfully terminates this agreement for cause under Article 6.

§ 3.4 Except for the licenses granted in this Article 3, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

ARTICLE 4 COMPENSATION

§ 4.1 The Owner shall compensate the Architect for services described in Section 1.1 as set forth below.
(Insert amount of, or basis for, compensation or indicate the exhibit in which compensation is provided for.)

Five (5%) percent of the GMP

§ 4.2 For Additional Services that may arise during the course of the Project, including those under Section 1.5, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

The Architect shall submit a scope and costs for any additional services prior to starting such services. Once the proposal is received, the Owner will respond within seven (7) days.

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§ 4.3 Compensation for Additional Services of the Architect's consultants when not included in Section 4.2, shall be the amount invoiced to the Architect plus five percent (5 %).

As part of this contract, the Architect shall include proposals from consultants for completing boundary and topographical survey, geotechnical report, environmental phase I report, SCDOT site traffic report, and other similar studies as required to fully describe the site. Upon written authorization, the Architect shall procure these services on behalf of the Owner as a Reimbursable Expense.

§ 4.4 Where compensation for Services described in Section 1.1 is based on a stipulated sum or percentage of the Guaranteed Maximum Price, the compensation for each phase of services shall be as follows:

Conceptualization Phase:	Ten	percent (	10	%)
Criteria Design Phase:	Twenty	percent (	20	%)
Detailed Design Phase:	Twenty	percent (	20	%)
Implementation Documents Phase:	Twenty-five	percent (	25	%)
Construction Phase:	Twenty	percent (	20	%)
Closeout Phase:	Five	percent (	5	%)
Total Basic Compensation	one hundred	percent (	100	%)

§ 4.5 When compensation is based on a percentage of the Guaranteed Maximum Price, compensation for services performed prior to establishment of the Guaranteed Maximum Price will be based upon the most recent Contractor's Estimate, as that term is defined in Section 4.2.3 of A295-2008. When compensation for Services described in Section 1.1 is based on a percentage of the Guaranteed Maximum Price and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 4.4 based on (1) the Guaranteed Maximum Price, or (2) until such time as the Guaranteed Maximum Price is established, the Owner's most recent Budget for the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the construction of the Work commenced.

§ 4.6 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices. *(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

See attached exhibit of hourly billing rates.

§ 4.7 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 4.7.1 Reimbursable Expenses are in addition to compensation for the Architect's professional services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 [Number not Used]
- .2 [Number not Used]
- .3 [Number not Used]
- .4 Printing, reproductions, plots, standard form documents; the Architect should strive to competitively bid out reproduction costs and to use electronic distribution as much as possible to control costs.
- .5 Postage, handling and delivery; the Architect should strive to use the least expensive service;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner (except materials created for community and district input meetings and Board of Education reports and presentations).
- .8 [Number not Used]
- .9 [Number not Used]
- .10 [Number not Used]

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- .11 Other similar Project-related expenditures.
- .12 Geotechnical Surveying and Wetlands Consultation and Permitting.

§ 4.7.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus an administrative fee of five percent (5 %) of the expenses incurred.

§ 4.8 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE

If the Owner terminates the Architect for its convenience under Section 6.5, or the Architect terminates this Agreement under Section 6.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of the Project as follows:

One dollar (\$1.00).

§ 4.9 PAYMENTS TO THE ARCHITECT

§ 4.9.1 [Number not Used].

§ 4.9.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.
(Insert rate of monthly or annual interest agreed upon.)

5.00 % per annum

§ 4.9.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect.

§ 4.9.4 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be provided with each invoice.

ARTICLE 5 DISPUTE RESOLUTION

§ 5.1 The Owner and Architect shall resolve any claim or cause of action arising out of or relating to this Agreement pursuant to the provisions set forth in the Project's customized form of the A295-2008.

§ 5.2 [Number not Used]

§ 5.3 To the extent damages are covered by property insurance, and the relevant policy permits, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in A295-2008. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 5.3.1 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 6.7.

ARTICLE 6 TERMINATION OR SUSPENSION

§ 6.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

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§ 6.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 6.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 6.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 6.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 6.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 6.7.

§ 6.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated.

§ 6.8 [Number not Used]

ARTICLE 7 MISCELLANEOUS PROVISIONS

§ 7.1 This Agreement shall be governed by the law of the place where the Project is located.

§ 7.2 Terms in this Agreement shall have the same meaning as those in AIA Document A295-2008.

§ 7.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

§ 7.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 7.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 7.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 7.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 7.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person other than as may be required by law, except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

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ARTICLE 8 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

1. The Architect will provide an electronic version of as-builts of the Project at the completion of construction; each drawing will be a separate PDF file and be named the same as the drawings sheet numbering scheme.
2. The Architect will provide after substantial completion, an 11th month warranty inspection with written report.
3. The Architect will provide assistance to the Owner's procurement process for evaluation of the contractors.
4. The Architect will conduct a series of District input meetings during the programming and conceptualization phases for the School Administrators/ Staff, the District Office Cabinet staff, the Facilities/ Maintenance Department, the Food Services Department, and IT Department.
5. The Architect will conduct a series of community involvement public meetings during the programming and conceptualization phases (at least two (2) public meetings during programming and one (1) public meeting during conceptualization).
6. The Architect will make presentations to the School Board about programming efforts/ design features/ public input ideas/ budget/ schedule during the "Detailed Design Phase" and prior to the completion of the construction documents.
7. The Architect will prepare and submit a two (2) page executive summary report on a monthly basis containing budget/ cost information, schedule, work progress summary, potential changes, and photographs at the 10th of each month.
8. The Architect will provide a written field report within five (5) days of each site visit during the construction phase.
9. The Architect will provide meeting notes within seven (7) days after the meeting during the design phase.

ARTICLE 9 SCOPE OF THE AGREEMENT

§ 9.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 9.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document B195-2008, Standard Form Agreement Between Owner and Architect for an Integrated Project
- .2 AIA Document A295-2008, General Conditions of the Contract for Integrated Project Delivery
- .3 AIA Document E201TM-2007, Digital Data Protocol Exhibit, if completed, or the following:
- .4 Other documents:
(List other documents, including the Architect's scope of services document, hereby incorporated into the Agreement.)

Customizations of the foregoing documents for the Project as of the date of execution of this Agreement or as subsequently agreed.

This Agreement entered into as of the day and year first written above.

OWNER (Signature)

Dr. Rodney Thompson Superintendent
(Printed name and title)

ARCHITECT (Signature)

Ron Smith AIA Principal-in-Charge
(Printed name and title)

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This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 11:14:29 on 12/11/2013.

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AGREEMENT made as of the tenth day of December in the year two thousand thirteen 2013

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The School District of Berkeley County, South Carolina 229 East Main Street Moncks Corner, South Carolina
29461 Phone: (843) 899-8600 Fax: (843) 899-8791

...

McMillan Pazdan Smith Architecture 12-A Vanderhorst Street Charleston, South Carolina 29403 Ron G. Smith,
Managing Principal Charleston
Phone: (843) 566-0771

...

New Elementary School at Foxbank Plantation
Berkeley County School District
Berkeley County, South Carolina

...

Contract Construction, Inc. P.O. Box 269 Ballentine, South Carolina 29002-0269 Greg Hughes, President
Phone: (803) 781-7058

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§ 1.1 The Architect shall provide the professional services set forth in AIA Document A295™–2008 General Conditions of the Contract for Integrated Project Delivery, which is incorporated herein by reference, except as specifically indicated to be the responsibility of others. Such services shall include usual and customary ~~structural, mechanical, and electrical engineering services~~ civil, structural, mechanical, and electrical engineering services with compliance to SCDOE OSF Guidelines and BCSD Facility Design Guidelines and as delineated in the Architect's proposal submitted in response to RFQ#396-(13-14)

...

One Million (\$1,000,000.00) per occurrence/ One Million (\$1,000,000.00) aggregate

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Statutory Minimum

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Architect: One Million (\$1,000,000.00) per claim/ One Million (\$1,000,000.00) aggregate
Consultants: One Million (\$1,000,000.00) per claim/ One Million (\$1,000,000.00) aggregate

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- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations; except OSF/ Fire Marshal interpretations.

...

- .6 Preparation of design and documentation for changes the Owner requests after acceptance of the Guaranteed Maximum Price; Price when construction costs exceed \$25,000.00.
.7 Preparation for, and attendance at, a public presentation, meeting or hearing; [Number not Used]
.8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, proceeding where a civil action has been filed in the judicial system, except where the Architect is party thereto;
.9 Evaluation of the qualifications of bidders or persons providing proposals; [Number not Used]
.10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
.11 Assistance to the Initial Decision Maker, if other than the Architect construction. 11 See attached Exhibit "A" for Schedule of Additional Services..

...

- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service; [Number not Used]
.4 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or [Number not Used]

...

- .1 Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor
.2 (—) An average of bi-weekly visits to the site by the Architect over the duration of the Project during construction
.3 Two (2) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the GMP Documents
.4 Two (2) inspections for any portion of the Work to determine final completion

§ 1.5.5 If the services covered by this Agreement have not been completed within forty-eight (48) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services, equitably in light of demonstrated additional performance costs incurred by the Architect.

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§ 3.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement, for the Owner's statutory duties and purposes. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the

Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services for the Project. ~~If the Architect rightfully terminates this Agreement for cause as provided in Section 6.4, the license granted in this Section 3.3 shall terminate.~~ The license also includes the Owner's right to provide the Instruments of Service to other Architects retained by the Owner for reference and consistency purposes in preparing future Instruments of Service for the Owner's needs at the Project or other Owner projects; the use of design concepts from the Instruments of Service for future projects is not in derogation of the license provided the resulting design is sealed and issued solely under the professional license(s) of a design professional then under contract to the Owner.

§ 3.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, ~~to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's terms of this Section 3.3.1 shall not apply to the use of the Instruments of Service under this Section 3.3.1.~~ The terms of this Section 3.3.1 ~~shall not apply for the Project~~ if the Owner rightfully terminates this agreement for cause under Article 6.

...

Five (5%) percent of the GMP

...

The Architect shall submit a scope and costs for any additional services prior to starting such services. Once the proposal is received, the Owner will respond within seven (7) days.

§ 4.3 Compensation for Additional Services of the Architect's consultants when not included in Section 4.2, shall be the amount invoiced to the Architect plus ~~percent (—%), or as otherwise stated below: five~~ percent (5 %).

As part of this contract, the Architect shall include proposals from consultants for completing boundary and topographical survey, geotechnical report, environmental phase I report, SCDOT site traffic report, and other similar studies as required to fully describe the site. Upon written authorization, the Architect shall procure these services on behalf of the Owner as a Reimbursable Expense.

PAGE 5

Conceptualization Phase:	<u>Ten</u>	percent (	<u>10</u>	%)
Criteria Design Phase:	<u>Twenty</u>	percent (	<u>20</u>	%)
Detailed Design Phase:	<u>Twenty</u>	percent (	<u>20</u>	%)
Implementation Documents Phase:	<u>Twenty-five</u>	percent (	<u>25</u>	%)
Construction Phase:	<u>Twenty</u>	percent (	<u>20</u>	%)
Closeout Phase:	<u>Five</u>	percent (	<u>5</u>	%)

...

See attached exhibit of hourly billing rates.

Employee or Category

Rate

...

- ~~1. Transportation and authorized out of town travel and subsistence; [Number not Used]~~
- ~~2. Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets; [Number not Used]~~
- ~~3. Fees paid for securing approval of authorities having jurisdiction over the Project; [Number not Used]~~

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- .4 Printing, reproductions, plots, standard form documents; the Architect should strive to competitively bid out reproduction costs and to use electronic distribution as much as possible to control costs.
- .5 Postage, handling and delivery; the Architect should strive to use the least expensive service;

...

- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the ~~Owner;~~ Owner (except materials created for community and district input meetings and Board of Education reports and presentations).
- .8 ~~Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants; [Number not Used]~~
- .9 ~~All taxes levied on professional services and on reimbursable expenses; [Number not Used]~~
- .10 ~~Site office expenses; and [Number not Used]~~
- .11 ~~Other similar Project-related expenditures.~~
- .12 Geotechnical Surveying and Wetlands Consultation and Permitting.

§ 4.7.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus an administrative fee of five percent (5 %) of the expenses incurred.

PAGE 6

One dollar (\$1.00).

...

§ 4.9.1 ~~An initial payment of (\$) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice. [Number not Used].~~

§ 4.9.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

...

5.00 % per annum

§ 4.9.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, ~~or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.~~ Architect.

§ 4.9.4 ~~Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times provided with each invoice.~~

...

§ 5.1 The Owner and Architect shall resolve any claim or cause of action arising out of or relating to this Agreement pursuant to the ~~mediation and arbitration provisions set forth in Sections 13.3 and 13.4 of the Project's customized form of the A295-2008.~~

§ 5.2 ~~The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 5.2. [Number not Used]~~

§ 5.3 To the extent damages are covered by property insurance, and the relevant policy permits, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in A295-2008. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

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§ 6.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise ~~compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.~~ compensated.

§ 6.8 ~~The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 3 and Section 4.8 of this Agreement as well as the A295-2008.~~ [Number not Used]

...

§ 7.1 This Agreement shall be governed by the law of the place where the Project is ~~located, subject to the Federal Arbitration Act as applicable.~~ located.

...

§ 7.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. ~~If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution.~~ The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

...

§ 7.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information ~~if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary information.~~ The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 7.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person other than as may be required by law, except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

PAGE 8

1. The Architect will provide an electronic version of as-builts of the Project at the completion of construction; each drawing will be a separate PDF file and be named the same as the drawings sheet numbering scheme.
2. The Architect will provide after substantial completion, an 11th month warranty inspection with written report.
3. The Architect will provide assistance to the Owner's procurement process for evaluation of the contractors.
4. The Architect will conduct a series of District input meetings during the programming and conceptualization phases for the School Administrators/ Staff, the District Office Cabinet staff, the Facilities/ Maintenance Department, the Food Services Department, and IT Department.
5. The Architect will conduct a series of community involvement public meetings during the programming and conceptualization phases (at least two (2) public meetings during programming and one (1) public meeting during conceptualization).

6. The Architect will make presentations to the School Board about programming efforts/ design features/ public input ideas/ budget/ schedule during the "Detailed Design Phase" and prior to the completion of the construction documents.
7. The Architect will prepare and submit a two (2) page executive summary report on a monthly basis containing budget/ cost information, schedule, work progress summary, potential changes, and photographs at the 10th of each month.
8. The Architect will provide a written field report within five (5) days of each site visit during the construction phase.
9. The Architect will provide meeting notes within seven (7) days after the meeting during the design phase.

...

Customizations of the foregoing documents for the Project as of the date of execution of this Agreement or as subsequently agreed.

...

Dr. Rodney Thompson Superintendent

Ron Smith AIA Principal-in-Charge

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, _____, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 11:14:29 on 12/11/2013 under Order No. 5662467476_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B195™ – 2008, Standard Form of Agreement Between Owner and Architect for Integrated Project Delivery, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

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General Conditions of the Contract for Integrated Project Delivery

for the following PROJECT:

(Name and location or address)

New Elementary School at Foxbank Plantation
Berkeley County, South Carolina

THE OWNER:

(Name, legal status and address)

THE SCHOOL DISTRICT OF BERKELEY COUNTY, SC
229 East Main Street
Moncks Corner, South Carolina 29461
Phone: (843) 899-8600
Fax: (843) 899-8791

THE ARCHITECT:

(Name, legal status and address)

McMillan Pazdan Smith Architecture
12A Vanderhorst Street
Charleston, South Carolina 29403
Ron G. Smith, Managing Principal Charleston
Phone: (843) 566-0771

THE CONTRACTOR:

(Name, legal status and address)

Contract Construction, Inc.
P.O. Box 269
Ballentine, South Carolina 29002-0269
Greg Hughes, President
Phone: (803) 781-7058

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 PURPOSE

The Owner, Architect and Contractor have agreed to plan, design, and construct the Project in a collaborative environment following the principles of Integrated Project Delivery to maximize the use of their knowledge, skills, and services for the benefit of the Project. The Architect and Contractor will deliver the Project in the following phases, which may overlap: Conceptualization, Criteria Design, Detailed Design, Implementation Documents, Construction and Closeout.

§ 1.2 INITIAL INFORMATION

The Owner, Architect and Contractor may rely on the Initial Information. Each, however, recognizes that such information may materially change and, in that event, the parties shall agree upon appropriate adjustments to the Architect's and Contractor's services and compensation, and the schedule. The Initial Information is as follows: *(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable," "unknown at time of execution" or "to be determined later by mutual agreement.")*

§ 1.2.1 The Owner's program for the Project:

(Identify documentation or state the manner in which the program will be developed.)

Berkeley County School District (BCSD) has provided as an attachment, a floor plan titled "Life Safety Plan- 1st Floor" for the Nexton Elementary School, to be used as a basis for the square footage and project budget. This initial programming document should be used as a starting point and validated through meetings with BCSD administration and staff.

§ 1.2.2 The Project's physical characteristics:

(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

The real property is currently located within the Foxbank Plantation development consisting of approximately twenty-four and 40/100 (24.40 acres, more or less and constitutes a portion of TMS# 197-00-01-008. This property is located on Foxbank Plantation Boulevard near the Yorkshire Drive intersection. Current configuration of the property is under development in relation to the location of fire station for Moncks Corner that is slated for construction in 2014. This property is a donation from Foxbank Ventures, LLC and will be subject to architectural approvals regarding compliance of the Foxbank Plantation development

§ 1.2.3 The Owner's Budget for the Work:

(Provide total and, if known, a line item breakdown.)

The estimated construction budget for the Project is \$16,474,598.00 that includes location studies (environmental, geotechnical, wetlands, etc.), architect and engineer fees, permits, construction, and outfitting costs.

§ 1.2.4 The Owner's anticipated design and construction schedule:

.1 Design phase milestone dates, if any:

As soon as prudently possible

.2 Commencement of construction:

As soon as prudently possible

.3 Substantial Completion date or milestone dates:

Occupy August 2018

.4 Other:

N/A

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§ 1.2.5 The Owner's requirements for accelerated or fast-track scheduling, or phased construction are set forth below:
(List number and type of procurement packages.)

To be determined during preconstruction phase consultations.

§ 1.2.6 Other Project information:
(Identify special characteristics or needs of the Project not provided elsewhere, such as environmentally responsible design or historic preservation requirements.)

BCSD's Facility Design Guidelines must be used. Owner places a high priority on life-cycle costs and not just construction costs.

§ 1.2.7 The Owner identifies the following representative in accordance with Section 2.1.1:
(List name, address and other information.)

Connie Myers, Capital Projects Manager, (843) 899-8505, Email: myersconnie@bcstdschools.net
Gene Sides, Lead Capital Projects Administrator, (843) 899-8393, Email: SidesG@bcstdschools.net

§ 1.2.8 The persons or entities, in addition to the Owner's representative, who are required to review submittals to the Owner are as follows:
(List name, address and other information.)

Archie Franchini, BCSD Deputy Superintendent, Office of Administration and Facility Services
(843) 899-8719, Email: FranchiniA@bcstdschools.net
Kim Glaze, Administrative Assistant for BCSD Deputy Superintendent
(843) 899-8629, Fax: (843) 899-8780, Email: GlazeK@bcstdschools.net

§ 1.2.9 The Owner will retain the following consultants and Contractors:
(List name, legal status, address and other information.)

.1 Geotechnical Engineer:

TBD

.2 Other, if any:

IBC Chapter 1 and Chapter 17 Inspectors required by Code to be provided by the Owner, per S.C.
Office of School Facilities Inspection Program

§ 1.2.10 The Architect identifies the following representative in accordance with Section 3.1.1:
(List name, address and other information.)

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§ 1.2.11 The Architect will retain the following consultants:
(List name, legal status, address and other information.)

.1 Structural Engineer:

ADC Engineering Specialists
1226 Yeamsns Hall Road
Hanahan, South Carolina 29410
(843) 566-0161

.2 Mechanical Engineer:

RMF Engineering, Inc.
194 Seven Farms Drive, Suite G
Charleston, South Carolina 29492
(843) 971-9639

.3 Electrical Engineer:

RMF Engineering, Inc.
194 Seven Farms Drive, Suite G
Charleston, South Carolina 29492
(843) 971-9639

.4 Other, if any:

- a. Civil Engineer
Seamon Whiteside & Associates
501 Wando Park Boulevard, Suite 200
Mount Pleasant, South Carolina 29464
(843) 884-1667
- b. Food Service Consultant- TBD

§ 1.2.12 The Contractor identifies the following representative in accordance with Section 4.1.1:
(List name, address and other information.)

TBD

§ 1.2.13 The Contractor will retain the following consultants and Subcontractors to assist the Contractor in its performance of the Pre-GMP Services:
(List name, address and other information.)

TBD

§ 1.2.14 Other Initial Information:

The Architect will conduct a series of community involvement public meetings during the programming and conceptualization phases (at least two (2) public meetings during programming and one (1) public meeting during conceptualization)

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The Contractor will conduct a series of community involvement public meetings during the preconstruction stage to present construction plans and schedule. The Contractor will conduct a small/ minority/ local business workshop to encourage participation.

§ 1.3 BASIC DEFINITIONS

§ 1.3.1 THE WORK

The term "Work" means the construction and services required of the Contractor by the Guaranteed Maximum Price Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations.

§ 1.3.2 THE PROJECT

The Project consists of the whole of the Architect's Services and the Work as that term is defined in Section 1.3.1 above and the professional services related thereto.

§ 1.3.3 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Guaranteed Maximum Price Documents showing the design, location and dimensions of the Work, generally including Models, plans, elevations, sections, details, schedules and diagrams.

§ 1.3.4 THE SPECIFICATIONS

The Specifications are that portion of the Guaranteed Maximum Price Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.3.5 BUILDING INFORMATION MODEL

The Building Information Model (Model(s)), is a digital representation of the physical and functional characteristics of the Project. The term "Model" may be used to describe a single model or multiple models used in the aggregate. "Building Information Modeling" (BIM) means the process and technology used to create the Model.

.1 Whether and to what extent any Model is appropriate for the Project will be determined by the parties during the first stages of the Pre-Construction Phase.

§ 1.3.6 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work provided by the Architect, the Architect's consultants, the Contractor, Subcontractors, or Sub-subcontractors under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, Models, sketches, drawings, specifications, and other similar materials.

§ 1.3.7 THE GUARANTEED MAXIMUM PRICE

The Guaranteed Maximum Price represents an amount that the Contract Sum shall not exceed as agreed to by the Owner and Contractor.

§ 1.3.8 THE GUARANTEED MAXIMUM PRICE DOCUMENTS

The Guaranteed Maximum Price Documents (GMP Documents) consist of the agreement between the Owner and Contractor (Owner-Contractor Agreement), General, Supplementary and other Conditions of the Contract (Conditions of the Contract), Drawings, Specifications, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect.

§ 1.3.9 THE CONTRACT

The GMP Documents comprise the Contract for Integrated Project Delivery. The Contract represents the entire and integrated agreement between the Owner and the Contractor and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The GMP Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than

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the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.3.10 THE IMPLEMENTATION DOCUMENTS

The Implementation Documents consist of the Architect and Contractor's further development of the GMP Documents as necessary to construct the Project.

§ 1.3.11 OWNER'S BUDGET FOR THE WORK

The Owner's Budget for the Work is the amount the Owner has budgeted to construct all elements of the Project designed or specified by the Architect and includes contractors' general conditions costs, overhead and profit. The Owner's Budget for the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

1 The Owner's Budget for the Project (see § 2.2.3) includes the Budget for the Work, but also includes all other costs of the capital program the Owner assigns to the Project for Owner-supplied property and services, as well as Owner contingency funds. Owner costs that are not Cost of the Work shall nonetheless be included in the Integrated Project Delivery Team's planning and consultation processes, so that the Cost of the Project is controlled concurrent with any decisions affecting the Cost of the Work.

§ 1.3.12 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Owner-Contractor Agreement to render initial decisions on Claims in accordance with Section 13.2 and certify termination of the Owner-Contractor Agreement under Section 7.2.2 of the Owner-Contractor Agreement, A195-2008, Standard Form of Agreement Between Owner and Contractor for Integrated Project Delivery.

§ 1.3.13 INTEGRATED PROJECT DELIVERY

Integrated Project Delivery is a project delivery approach that integrates people, systems, business structures and practices into a process that collaboratively harnesses the talents and insights of all participants to reduce waste and optimize efficiency through all phases of design, fabrication and construction.

§ 1.4 CORRELATION AND INTENT OF THE GMP DOCUMENTS

§ 1.4.1 The intent of the GMP Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The GMP Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the GMP Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.4.2 Neither organization of the Specifications into divisions, sections and articles, arrangement of Drawings, organization of the Model, or the issuance of separate Models shall control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.4.3 Unless otherwise stated in the GMP Documents, words that have well-known technical or construction industry meanings are used in the GMP Documents in accordance with such recognized meanings.

§ 1.4.4 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4.5 INTERPRETATION

In the interest of brevity, words such as "all" and "any" and articles such as "the" and "an" may be omitted, but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

The Architect, Architect's consultants, Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized, solely and exclusively for use in completion of the Project, to use and reproduce the Instruments of Service provided to them. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Architect, Architect's consultants, Contractor, Subcontractors,

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Sub-subcontractors, and material or equipment suppliers may not use another author's Instruments of Service on other projects without the specific written consent of the Owner and the author of the Instruments of Service, or as otherwise provided by a relevant licensing agreement.

§ 1.5.1 The Architect and Contractor shall utilize a Model as Instruments of Service to the greatest extent practicable and pursuant to Section 1.5.2. Unless the parties mutually agree otherwise, the Architect shall be responsible for the integration and coordination of the Model throughout the design and construction of the Project.

§ 1.5.2 SOFTWARE AND DATA EXCHANGE PROTOCOLS

The Owner, Architect and Contractor shall, at the earliest practical moment, meet and delineate the types of software to be used on the Project and establish protocols, standards and tolerances as may be required for the proper execution of the Work. The Owner, Architect and Contractor shall work together to establish the permitted uses for all digital information, including the Model, to be exchanged on the Project. Such determinations shall be set forth in AIA Document E201™-2007, or a similar document, that shall be incorporated by reference into all agreements for services or construction for the Project.

- .1 The Drawings and Specifications physically signed and sealed by the design professional shall prevail over any conflicts between them and the digital forms of such drawings and specifications.
- .2 The Architect/ Engineer will provide construction documents in PDF format to the Owner at no additional expense.

§ 1.6 COORDINATION

The Owner, Architect and Contractor shall coordinate the services provided by one another's consultants, subconsultants, contractors and Subcontractors. Upon request, the Owner, Architect and Contractor shall furnish copies of the scopes of services in the services contracts they hold. The Owner shall require that its consultants and contractors maintain professional liability insurance and other liability insurance, as appropriate to the services provided.

§ 1.7 Regular IPD Team Meetings will be scheduled by and through the Owner's Representative. Unless otherwise indicated by the Owner's Representative, each party shall be represented by appropriate staff at each meeting of the IPD Team. During the design phase the Architect shall take meeting minutes and distribute within one (1) week of meeting date and during the construction phase the Contractor shall take meeting minutes and distribute within one (1) week of meeting date.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in this document and is referred to as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. The term "Owner" means the Owner or the Owner's authorized representative.

- .1 Unless directly communicated to the IPD team by one of the entities listed in the next subsection (§ 2.1.1.2) all decisions of the Owner may be deemed to be communicated by the Owner to the Architect and Contractor solely as and when communicated through the Owner's Representative.
- .2 The only other persons who may make decisions as the "Owner" are:
 - (a) the Deputy Superintendent over the Office of Administration and Facility Services;
 - (b) the Superintendent;
 - (c) the Berkeley County Board of Education.
- .3 By way of example and not exhaustion, the terms "Owner" and "Owner's Representative" do NOT include ANY staff not listed above, nor any individual or group providing input and commentary on the Project. Any "input" to be integrated into design and/or construction must be confirmed with the Owner's Representative in consultation with the IPD team, taking into account the entirety of the Project program, budget, schedule, aesthetics, and other relevant IPD team considerations.

§ 2.1.2 The Owner shall furnish information or services required of the Owner by the GMP Documents in a timely manner. The Owner shall also furnish any other information or services under the Owner's control and relevant to the

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Architect and Contractor's performance with reasonable promptness after receiving the written request for such information or services.

§ 2.1.3 The Architect and Contractor shall be entitled to rely on the accuracy and completeness of information furnished by the Owner.

§ 2.1.4 The Owner shall provide prompt written notice to the Architect and Contractor if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Instruments of Service.

§ 2.1.5 The Owner shall furnish to the Architect and Contractor, within fifteen days after receipt of a written request, information necessary and relevant to give notice of project commencement.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 The Owner shall provide information regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements.

.1 The IPD team will refine and develop the Program in the early Conceptualization Phase. The Community Meetings process will be a contributing source of information for finalizing the Program.

§ 2.2.2 Prior to the establishment of the Guaranteed Maximum Price, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the GMP Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor and Architect.

§ 2.2.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the Budget for the Work; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's Budget for the Work, the Owner shall notify the Architect and Contractor. The Owner and the Architect and Contractor shall thereafter agree to a corresponding change in the Owner's Budget for the Work or in the Project's scope and quality.

§ 2.2.4 Except for permits and fees that are the responsibility of the Contractor under the GMP Documents, including those required under Section 9.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for design, construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.5 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 2.2.6 The Owner shall furnish, if needed, services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 2.2.7 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

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§ 2.2.8 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 2.2.9 The Owner may satisfy its obligation to provide services pursuant to § 2.2.5, § 2.2.6, and § 2.2.7, by requesting the Architect to retain the providers of such services; provided however, that the Owner and Architect must first agree upon the provider and the estimated fees, rates, or other relevant cost structure. Such providers must present, where relevant to the service to be provided, satisfactory proof of professional responsibility insurance commensurate with the scope of services provided. Upon apparent satisfactory performance by the third party providers, the Owner will reimburse the Architect one hundred five percent (105%) of the actual cost for the agreed services. Consideration should be given to firms who have already performed similar work in the area since it would follow that their services should be less costly to BCSD.

ARTICLE 3 ARCHITECT

§ 3.1 GENERAL

§ 3.1.1 The Architect is the person or entity identified as such in this document and is referred to as if singular in number. The Architect shall be lawfully licensed to practice architecture or engineering or an entity lawfully practicing architecture or engineering in the jurisdiction where the Project is located. The Architect shall designate in writing a representative who shall have express authority to bind the Architect with respect to all matters related to the Project. The term "Architect" means the Architect and the authorized representative.

§ 3.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in this document shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

§ 3.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the GMP Documents shall be that of the Architect.

§ 3.2 ARCHITECT'S GENERAL SERVICES

§ 3.2.1 The Architect shall assist the Owner in establishing a list of prospective contractors for the Project.

§ 3.2.2 The Architect shall manage the Architect's services, consult with the Owner and Contractor, research applicable design criteria, attend Project meetings, and report Project progress to the Owner.

- .1 Included in this scope is a series of Community Input meetings to be arranged by the Owner.
- .2 The Architect shall update the Owner's Board at its meetings upon Owner request.

§ 3.2.3 The Architect shall consult with the Owner and Contractor regarding the accuracy and completeness of the Contractor's Estimates, as that term is defined in Section 4.2.3, as the Architect progresses with the preparation of the Criteria Design, Detailed Design and Implementation Documents. The Architect shall review the Contractor's Estimates, compare them with the current market information known to the Architect, and report to the Owner any material inaccuracies and inconsistencies noted during any such review.

§ 3.2.4 The Architect shall, at appropriate times, contact the governmental authorities required to approve the GMP Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to and satisfy applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

- .1 The Architect shall carefully study any existing Development Agreement which may apply to the real property obtained by the Owner and lead the effort to obtain any clarifications, approvals, waivers, or other administrative action that may be useful or necessary to the Project under the applicable development regime, as such Development Agreements may contain development constraints or other special requirements that vary from the development regulations otherwise in force in Berkeley County.

§ 3.2.5 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project. The Architect shall generate documents suitable for submission to the necessary governmental authorities.

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§ 3.2.6 The Architect shall perform a quality assurance check on the final design documents and show the list of items to be corrected and how they were corrected. A quality check from a third party consultant is encouraged.

ARTICLE 4 CONTRACTOR

§ 4.1 GENERAL

§ 4.1.1 The Contractor is the person or entity identified as such in this document and is referred to as if singular in number. The Contractor shall be lawfully licensed in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters related to the Project. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 4.1.2 If the employment of the Contractor is terminated but the Project is not terminated, the Owner shall employ a successor contractor whose status under the GMP Documents shall be that of the Contractor.

§ 4.2 GENERAL CONSULTATION RESPONSIBILITIES

§ 4.2.1 Throughout the development of the GMP Documents, the Contractor shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Contractor shall also provide recommendations on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, the Owner's Budget for the Work, and possible cost reductions.

§ 4.2.2 The Contractor shall assist the Owner in connection with the Owner's responsibility for obtaining approval for the Work from governmental authorities having jurisdiction over the Project.

§ 4.2.3 The Contractor shall provide estimating services throughout the design of the Project as specifically required in Articles 5, 6 and 7, and at other various times agreed to by the Owner, Architect and Contractor. The Contractor shall provide estimates of the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit (Contractor's Estimate). The Contractor's Estimate shall not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work, or other costs that are the responsibility of the Owner. The Contractor's Estimates shall increase in detail and refinement as the Architect progresses with the preparation of the Criteria Design, Detailed Design and Implementation Documents.

§ 4.2.3.1 In preparing the Contractor's Estimates, the Contractor shall include contingencies for design, procurement, and reasonable price escalation. The Contractor's Estimate shall be based on current area, volume or similar conceptual estimating techniques.

§ 4.2.4 For each of the Contractor's Estimates, provided pursuant to Section 4.2.3, the Contractor shall provide adequate detail to support the estimate. The Contractor shall submit its estimates for the Architect's review and the Owner's acceptance. The Contractor shall advise the Owner and Architect if it appears that any of Contractor's Estimates may exceed the Owner's most recent Budget for the Work and, in consultation with the Architect, make recommendations for corrective action.

§ 4.2.5 The Contractor does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price.

§ 4.2.6 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the GMP Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the GMP Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when

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submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 4.2.6, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

ARTICLE 5 CONCEPTUALIZATION PHASE

§ 5.1 The Owner, Architect and Contractor shall review the program developed and furnished by the Owner to ascertain the requirements of the Project and shall arrive at a mutual understanding of those requirements. The Architect shall present its preliminary evaluation to the Owner and Contractor and discuss possible alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding in writing with the Owner and Contractor regarding the requirements of the Project.

§ 5.2 As soon as practicable, the Architect shall submit to the Owner and Contractor a schedule of the Architect's services for inclusion in the Project schedule. The schedule of the Architect's services shall include design milestone dates, anticipated dates when cost estimates or design reviews may occur, and allowances for periods of time required (1) for the Owner's review (2) for the performance of the Owner's consultants, and (3) for approval of submissions by authorities having jurisdiction over the Project.

§ 5.3 The Contractor shall prepare and periodically update a Project schedule in collaboration with the Architect. The Project schedule shall coordinate and integrate the Contractor's services, the Architect's services, and the Owner's responsibilities, and highlight items that could affect the Project's timely completion.

§ 5.4 Once the Owner, Architect and Contractor agree to the time limits established by the Project schedule, the Owner, Architect and Contractor shall not exceed them, except for reasonable cause.

§ 5.5 The Architect and Contractor shall provide a preliminary evaluation of the Owner's program and Budget for the Work, each in terms of the other as well as recommendations, if any, with regard to accelerated or fast-track scheduling, procurement, or phased construction. The preliminary evaluation shall take into consideration cost information, constructability, and procurement and construction scheduling issues. To the extent possible, the information shall be integrated into the Model.

ARTICLE 6 CRITERIA DESIGN PHASE

§ 6.1 The Architect, in consultation with the Contractor, shall prepare and present for the Owner's approval a preliminary design illustrating the scale and relationship of the Project components.

§ 6.2 Based on the Owner's approval of the preliminary design, the Architect, in consultation with the Contractor, shall prepare Criteria Design Documents for the Owner's approval. The Criteria Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, and Models. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 6.2.1 Together, the Architect, Contractor, and Owner shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and Budget for the Work. The Owner may obtain other environmentally responsible design accreditation, grant writing, and similar advanced services involving additional consultants or outside parties, as an Additional Service.

§ 6.2.2 Together, the Architect, Contractor, and Owner shall consider life-cycle costs, and the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics in developing a design for the Project that is consistent with the Owner's schedule and Budget for the Work.

§ 6.3 During the Criteria Design Phase, the Architect shall meet with the Owner and Contractor as appropriate to the progress of the design to review the Criteria Design Documents as necessary.

§ 6.4 The Contractor shall obtain information from potential Subcontractors and material suppliers regarding proposed systems or products, including material procurement scheduling, product data sheets, life cycle and energy efficiency data, cost data necessary to validate estimates and schedules for their scopes of work, tolerances, and prefabrication opportunities.

§ 6.5 The Contractor, for the Architect's review and the Owner's acceptance, shall prepare a procurement schedule for items that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Contractor. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Contractor and the Contractor shall thereafter accept responsibility for them.

§ 6.6 At the conclusion of the Criteria Design Phase, the Owner, Architect and Contractor shall meet to review the Criteria Design Documents.

§ 6.7 Based upon the Criteria Design Documents, the Contractor shall update the Contractor's Estimate and Project schedule.

§ 6.7.1 If revisions to the Criteria Design Documents are required to comply with the Owner's Budget for the Work at the conclusion of the Criteria Design Phase, the Architect shall consult with the Owner and Contractor to determine appropriate solutions. The Architect shall then incorporate any agreed-upon revisions during the Detailed Design Phase.

ARTICLE 7 DETAILED DESIGN PHASE

§ 7.1 Based on the Owner's approval of the Criteria Design Documents, as well as the Owner's authorization of any adjustments in the Project requirements and the Owner's Budget for the Work pursuant to Section 2.2.3, the Architect, in consultation with the Owner and Contractor, shall prepare Detailed Design Documents for the Owner's approval. The Detailed Design Documents shall illustrate and describe the development of the approved Criteria Design Documents and shall consist of drawings, other documents and the Model.

§ 7.2 During the Detailed Design Phase, the Architect shall meet with the Owner and Contractor as appropriate and necessary to the progress of the design to review the Detailed Design Documents.

§ 7.3 Prior to the conclusion of the Detailed Design Phase, the Contractor shall furnish to the Owner and Architect a list of possible Subcontractors and material suppliers.

§ 7.4 The Contractor shall provide updates to the Contractor's Estimate and the Project schedule to ensure consistency with the Detailed Design Documents and to incorporate information received from potential Subcontractors and material suppliers pursuant to Section 6.4. The Contractor shall obtain additional information as needed to coordinate systems, including mechanical, electrical, plumbing and structural, and to verify tolerances.

§ 7.4.1 If the Contractor's Estimate at the conclusion of the Detailed Design Phase exceeds the Owner's Budget for the Work, the Owner shall

- .1 give written approval of an increase in the Owner's Budget for the Work;
- .2 in consultation with the Architect and Contractor, revise the Project program, scope, or quality as required to bring the Contractor's Estimate within the Owner's Budget for the Work; or
- .3 implement any other mutually acceptable alternative.

§ 7.4.2 If the Owner chooses to proceed under Section 7.4.1.2, the Architect, without additional compensation, shall incorporate the agreed upon modifications as necessary to comply with the Owner's Budget for the Work, or the Owner's Budget for the Work as adjusted under Section 7.4.1.1. After incorporation of such modifications to comply with this Section 7.4.2, the Architect shall, as an Additional Service, make any required revisions to the Drawings, Specifications or other documents necessitated by subsequent cost estimates that exceed the Owner's Budget for the Work, except when the excess is due to changes initiated by the Architect in scope, basic systems, or the kinds and quality of materials, finishes or equipment.

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§ 7.5 At the conclusion of the Detailed Design Phase, the Architect shall submit Detailed Design Documents consistent with the Owner's Budget for the Work to the Owner. The Owner, Architect and Contractor shall meet to review the Detailed Design Documents.

§ 7.6 Upon the Owner's acceptance of the Detailed Design Documents, the Contractor shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance.

§ 7.7 To the extent that the GMP Documents are anticipated to require further development in the Implementation Documents Phase, the Contractor shall provide in the Guaranteed Maximum Price proposal for such further development consistent with the GMP Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 7.8 The Contractor shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A complete list of the documents and information used in preparation of the Guaranteed Maximum Price proposal.
- .2 A list of allowances and a statement of their basis.
- .3 A list of the Contractor's clarifications and assumptions, if any, with regard to the GMP Documents and information relied upon in preparation of the Guaranteed Maximum Price proposal.
- .4 The proposed Guaranteed Maximum Price, including a statement of the estimated cost organized by trade categories, allowances, contingencies, the Contractor's Fee, and other items that comprise the Guaranteed Maximum Price.
- .5 The anticipated date of Substantial Completion upon which the Guaranteed Maximum Price proposal is based, and a schedule for the issuance dates of the Implementation Documents upon which the anticipated Substantial Completion date relies.

§ 7.9 The Contractor shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Contractor, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 7.10 Once accepted by the Owner, the Guaranteed Maximum Price, including the written statement required under Section 7.8 as appropriate, shall be set forth in an amendment to the Owner-Contractor Agreement, a copy of which amendment the Owner shall provide to the Architect. Upon the Owner's acceptance of the Guaranteed Maximum Price proposal, the Detailed Design Documents upon which the approved Guaranteed Maximum Price is based shall become part of the GMP Documents.

§ 7.10.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work may be determined by any of the methods listed in Section 9.21.3.3.

§ 7.10.2 If no specific provision is made in the Contractor's Guaranteed Maximum Price for adjustment of the Contractor's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions will cause substantial inequity to the Owner or Contractor, the Contractor's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 8 IMPLEMENTATION DOCUMENTS PHASE

§ 8.1 Based on the GMP Documents and the Guaranteed Maximum Price, the Architect and Contractor shall prepare Implementation Documents. The Implementation Documents shall illustrate and describe the further development of the approved GMP Documents and shall set forth in detail the requirements for the construction of the Work.

§ 8.2 The Contractor shall coordinate with Subcontractors and material suppliers to obtain finalized cost information and schedules for their scopes of work and to ensure that the Implementation Documents include sufficient and unambiguous information for completion of the Work.

§ 8.3 During preparation of the Implementation Documents, the Architect shall consider the Contractor's recommendations for substitutions, and shall incorporate that information, as well as cost or product data, into the Implementation Documents.

§ 8.4 The Architect and the Contractor shall incorporate into the Implementation Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 8.5 Pursuant to a schedule the Architect and Contractor agree to, the Contractor shall provide Shop Drawings and other submittals for the Architect's review and approval, and incorporation into the Implementation Documents. The review of such submittals shall be made pursuant to Section 9.12.

§ 8.6 The Owner and the Contractor shall agree, in writing, on the commencement date for construction of the Work. If the Owner and Contractor agree, the Contractor may begin construction of the Work during the Implementation Documents Phase, as appropriate.

§ 8.7 At the conclusion of the Implementation Documents Phase, the Owner, Architect and Contractor shall meet to review the Implementation Documents. Upon the Owner's approval of the Implementation Documents, they shall become part of the GMP Documents and shall take priority over the Detailed Design Documents.

ARTICLE 9 CONSTRUCTION PHASE

§ 9.1 GENERAL PROVISIONS

§ 9.1.1 The Contractor shall perform the Work in accordance with the GMP Documents.

§ 9.1.2 The Contractor shall not be relieved of obligations to perform the Work in accordance with the GMP Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor, including but not limited to International Building Code Chapter 1 and Chapter 17 inspections and inspection reports.

§ 9.1.3 The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform its services in an expeditious and economical manner consistent with the Owner's interests.

§ 9.2 REVIEW OF GMP DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 9.2.1 The Contractor shall visit the site and become generally familiar with local conditions under which the Work is to be performed and correlate personal observations with requirements of the GMP Documents.

§ 9.2.2 Because the GMP Documents are complementary, the Contractor shall, before starting construction of each portion of the Work, carefully study and compare the various GMP Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.5, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. The Contractor shall promptly report to the Architect and Owner any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

.1 The Contractor shall ascertain and factor into its GMP any special, local restrictions, such as HOA rules, applicable to the Work (e.g. working hours, jobsite screening, etc.)

§ 9.2.3 The Contractor is not required to ascertain that the GMP Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 9.2.4 Due to the responsibility the Contractor assumes throughout the development of the GMP Documents, neither the Owner nor the Architect shall be liable to the Contractor for damages resulting from errors, inconsistencies or omissions the Contractor reports pursuant to Section 9.2.2. However, if the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's requests

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for information pursuant to Section 9.2.3, the Contractor shall make Claims as provided in Article 13. If the Contractor fails to perform the obligations of either Sections 9.2.2 or 9.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations.

§ 9.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 9.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract. The Contractor shall evaluate the jobsite safety thereof and shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures.

§ 9.3.2 The Contractor shall provide monthly written reports to the Owner and Architect on the progress of the entire Work. The Contractor shall maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as the Owner may reasonably require. The log shall be available to the Owner and Architect.

§ 9.3.3 The Contractor shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Contractor shall identify variances between actual and estimated costs and report the variances to the Owner and Architect at regular intervals.

§ 9.3.4 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 9.3.5 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 9.4 LABOR AND MATERIALS

§ 9.4.1 Unless otherwise provided in the GMP Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

.1 As required by S.C. Code § 8-14-20, the Contractor agrees to register and participate in the federal work authorization program to verify the employment authorization of all new employees and require agreement from its subcontractors, and through the subcontractors, the sub-subcontractors, to register and participate in the federal work authorization program to verify the employment authorization of all new employees.

.2 As required by S.C. Code § 8-14-40, the Contractor will comply with the requirements of Title 8, chapter 14 of the Code of Laws and agrees to provide to the Owner any documentation required to establish either: (a) the applicability of this chapter to the contractor, subcontractor, and sub-subcontractor; or (b) the compliance with this chapter by the contractor and any subcontractor or sub-subcontractor

§ 9.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 9.21.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 9.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 9.4.4 CRIMINAL HISTORY CHECKS

The Contractor and each subcontractor of any tier shall:

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User Notes:

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- .1 Perform a Sex Offender Registry search, through <http://services.sled.sc.gov/sor/> or a comparable service with the same level of access to the National Sex Offender Registry, for each employee to be assigned to labor at the site. An employee who is on the National Sex Offender shall not be assigned duties at the site of the Project.
- .2 Perform a SLED CATCH check on employees to be assigned to labor at the site, and not assign an employee to the site of the Project without the written consent of the Owner if the employee has been convicted of a crime of violence, a crime affecting minors, enticing enrolled child from attendance in school (§16-17-510); disturbing schools (§16-17-420); contributing to delinquency of a minor (§16-17-490); or the comparable criminal provisions of another jurisdiction.
- .3 Retain and make available for inspection by the Contractor and the District (or its agents) documents evidencing compliance with these requirements.
- .4 Bring to the Owner's attention information indicating that an employee is currently the subject of an active prosecution for violating any of the above criminal provisions.
- .5 Owner retains the right to exercise sole discretion to exclude any person whose presence and criminal history indicate a concern about the security and safety of the persons or property at the Project site. The Owner may set different standards of access based on the phasing, student and staff occupancy status, and other characteristics of the work conditions.
- .6 For purposes of this § 9.4., the Owner's intent is to require checks only for employees who have sufficient access to the staff and property at the project site to warrant an extra measure of security. All others whose presence is brief and/or supervised, such as manufacturer representatives, deliverymen, home office management and staff, couriers, and inspectors, are not required to be run through these procedures.
- .7 To the extent not already exempted by this paragraph, also excluded from the checks required by this § 9.4.4 are persons performing professional duties at the Project pursuant to a professional license from the State issued personally to that professional.

§ 9.5 WARRANTY

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the GMP Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the GMP Documents and will be free from defects, except for those inherent in the quality of the Work the GMP Documents require or permit. Work, materials, or equipment not conforming to these requirements is defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 9.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 9.7 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

§ 9.7.1 Unless otherwise provided in the GMP Documents, the Contractor shall secure and pay for permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured and legally required at the time the Guaranteed Maximum Price is established.

§ 9.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 9.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

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§ 9.7.4 CONCEALED OR UNKNOWN CONDITIONS

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those upon which the parties relied in the development of the GMP Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the GMP Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 13.

§ 9.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the GMP Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 13.

§ 9.8 ALLOWANCES

§ 9.8.1 The Contractor shall include in the Contract Sum all allowances stated in the GMP Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 9.8.2 Unless otherwise provided in the GMP Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 9.8.2.1 and (2) changes in Contractor's costs under Section 9.8.2.2.

§ 9.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 9.9 SUPERINTENDENT

§ 9.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 9.9.2 [Number not Used]

§ 9.9.3 The Contractor shall not employ a project manager or superintendent to whom the Owner or Architect object. The Contractor shall not change the project manager or superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 9.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 9.10.1 The Contractor shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the GMP Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the GMP Documents, and shall provide for expeditious and practicable execution of the Work.

§ 9.10.2 If the GMP Documents require submittals during the Construction Phase, the Contractor shall prepare a submittal schedule, promptly after the Owner's acceptance of the Guaranteed Maximum Price and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The

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Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the GMP Documents require that the Contractor provide a submittal schedule and the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals. Shop Drawings, Product Data, Samples and similar submittals required during the Construction Phase are not GMP Documents.

§ 9.10.3 The Contractor shall perform the Work in general accordance with the most recent construction schedules submitted to the Owner and Architect.

§ 9.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the GMP Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved submittals provided during construction. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 9.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 9.12.1 Shop Drawings are drawings, diagrams, models, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work. If the Architect is entitled to Additional Services because of the deficiencies in the Contractor's submittals, then the Contractor will bear the cost of the Additional Services.

§ 9.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 9.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 9.12.4 The purpose of Shop Drawings, Product Data, Samples and similar submittals is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the GMP Documents for those portions of the Work for which the GMP Documents require submittals. Review by the Architect is subject to the limitations of Section 9.26.5.2. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the GMP Documents. Submittals that are not required by the GMP Documents may be returned by the Architect without action.

§ 9.12.5 The Contractor shall review for compliance with the GMP Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ 9.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals as consistent with the requirements of the Work and the GMP Documents.

§ 9.12.7 The Contractor shall perform no portion of the Work that requires submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

§ 9.12.8 The Work shall be in accordance with approved submittals.

§ 9.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

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§ 9.13 USE OF SITE

The Contractor shall confine operations at the site to times and areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, reasonable directions of the Owner consistent with the needs of use of the sites as functioning public school facilities, and the GMP Documents and shall not unreasonably encumber the site with materials or equipment.

§ 9.14 CUTTING AND PATCHING

§ 9.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the GMP Documents.

§ 9.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 9.15 CLEANING UP

§ 9.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of various phases or locations of the Work, or when an area is otherwise meant to be returned to Owner use temporarily according to phasing and safety plans, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about that portion of the site.

§ 9.15.2 If the Contractor fails to clean up as provided in the GMP Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

§ 9.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

§ 9.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the GMP Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 9.18 INDEMNIFICATION

§ 9.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 9.18.

§ 9.18.2 In claims against any person or entity indemnified under this Section 9.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 9.18.1 shall not be limited by a limitation on amount or type of damages,

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compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 9.19 SUBCONTRACTORS

§ 9.19.1 DEFINITIONS

§ 9.19.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the GMP Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or Subcontractors of a separate contractor.

§ 9.19.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the GMP Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 9.19.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 9.19.2.1 The Owner and the Architect shall have full access to Contractor's buy-out of the Project. The Contractor shall include in its GMP Proposal the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner and Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that additional time is required for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 9.19.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 9.19.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 9.19.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 9.19.3 SUBCONTRACTUAL RELATIONS

Each Subcontractor, to the extent of the Work to be performed by the Subcontractor, is bound to the Contractor by terms of the GMP Documents, and assumes toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the GMP Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the GMP Documents, has against the Owner. Each Subcontract contains the same agreements with regard to Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the GMP Documents and other documents to which the Subcontractor will be bound.

§ 9.19.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 9.19.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 7.2.2 of the Owner-Contractor Agreement and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the suretyobligated under bond relating to the Contract.

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When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the prospective rights and obligations under the subcontract to complete the subcontractor's Work, but the Contractor remains responsible for any liability theretofore accrued to the subcontractor and for any claims of the subcontractor arising from or relating back to Work of the subcontractor prior to assignment.

§ 9.19.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 9.19.4.3 Upon such assignment to the Owner under this Section 9.19.4, the Owner may further assign the subcontract to a successor contractor or other entity.

§ 9.20 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 9.20.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 9.20.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 13.

§ 9.20.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the GMP Documents in each case shall mean the Contractor who executes each separate contract.

§ 9.20.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 9.20.1.4 Unless otherwise provided in the GMP Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Contract.

§ 9.20.2 MUTUAL RESPONSIBILITY

§ 9.20.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the GMP Documents.

§ 9.20.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 9.20.2.3 Each Contractor shall pay costs incurred by a separate contractor because of the Contractor's delays, improperly timed activities or defective construction.

§ 9.20.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner, separate contractors as provided in Section 9.25.2.5.

§ 9.20.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 9.14.

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§ 9.20.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

§ 9.21 CHANGES IN THE WORK

§ 9.21.1 GENERAL

§ 9.21.1.1 Changes in the Work may be accomplished after execution of the Contract without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Section 9.21 and elsewhere in the GMP Documents.

§ 9.21.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 9.21.1.3 Changes in the Work shall be performed under applicable provisions of the GMP Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§ 9.21.2 CHANGE ORDERS

§ 9.21.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 9.21.3 CONSTRUCTION CHANGE DIRECTIVES

§ 9.21.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 9.21.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 9.21.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the GMP Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 9.21.3.7.

§ 9.21.3.4 If unit prices are stated in the GMP Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.21.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

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§ 9.21.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 9.21.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth below. In such case, and also under Section 9.21.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the GMP Documents, costs for the purposes of this Section 9.21.3.7 shall be limited to the following, and only in reasonable amounts:

- .1 Costs of labor, including social security and unemployment insurance, fringe benefits required by agreement, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.
- .6 Limit on percent markup for overhead and profit on change orders is as follows: Self performing work is limited to a maximum of 15%; overhead and profit on subcontractor work is 7%.

§ 9.21.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 9.21.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 13.

§ 9.21.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 9.21.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time, if not inconsistent with Owner instructions to the Architect and not inconsistent with the intent of the GMP Documents. Prior to issuing a Minor Change, the Architect shall notify the Contractor and the Owner of the nature, extent and anticipated time of issuance of the proposed directive. The Architect and Contractor shall make adjustments to the GMP Documents to reflect the proposed directive for the review of the Owner, Architect and Contractor. The Contractor must determine the effect of the proposed directive on the cost and time of completion of the Work and on the Contractor's ability to construct the work in accordance with the revised GMP Documents and provide appropriate recommendations to the Owner and Architect. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

§ 9.22 TIME

§ 9.22.1 DEFINITIONS

§ 9.22.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the GMP Documents for Substantial Completion of the Work after commencement of Construction.

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§ 9.22.1.2 The date of Substantial Completion is the date certified by the Architect in accordance with Section 10.1. An Office of School Facilities ("OSF") occupancy permit does not suffice to certify Substantial Completion for purposes of these Contract Documents.

§ 9.22.1.3 The term "day" as used in the GMP Documents shall mean calendar day unless otherwise specifically defined.

§ 9.22.2 PROGRESS AND COMPLETION

§ 9.22.2.1 Time limits stated in the GMP Documents for the Substantial Completion of the Work are of the essence of the Contract. By executing the GMP Amendment the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 9.22.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 9.22.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 9.22.3 DELAYS AND EXTENSIONS OF TIME

§ 9.22.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by causes that justify delay, as more specifically addressed in the following subsections, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

§ 9.22.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 13. The Contractor waives any Claim relating to time that is not made in accordance with applicable provisions of Article 13. The Contractor also waives and releases any Claim for additional costs of any nature premised upon the Owner's failure to give an extension of time, unless the Contractor has given to the Owner and Architect, within the applicable time limits set forth in the Contract Documents, a proper Claim for the time.

§ 9.22.3.3 The Contractor is not entitled to an extension of time, compensation of any nature, costs, or damages, if the Contractor is delayed by an event or the occurrence of any risk, either of which was within the scope of the Contractor's contractual responsibility to foresee, estimate, predict, acquire, control, plan for, contract for, and manage in order to accomplish the Work required by the Contract Documents. The Contractor's responsibilities include, but are not limited to, the following:

- .1 Anticipating and accounting for variable and inconsistent labor, materials, supplies, and site access;
- .2 Subcontractor and supplier insolvency, default, non-performance (including the performance and correction of non-conforming work), and financial non-responsibility; and
- .3 Other events for which the Contractor has the risk of anticipating and managing in order to accomplish the Work within the price and time called for in the Contract. Assessment of the existence of the basis for a time extension shall be determined by the Contractor's construction schedule.

§ 9.22.3.4 A basis may exist for an extension of time if:

- .1 The Contractor is delayed in performing the Work, but solely to the extent that delays are caused by events that are beyond the control and/or contractual responsibility of the Contractor, its subcontractors, sub-subcontractors, and suppliers at every tier;
- .2 Delays directly impact the Contractor's ability to achieve Completion of the Work in accordance with the Contract Time requirements established by the Contract Documents, as amended by executed Change Order;
- .3 Delays cannot be made up by reasonable efforts; and
- .4 Delays stem from the following causes:

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- a. Class 1 causes: (i) an act or failure to act on the part of the Owner, any consultant or employee of the Owner, or of a separate contractor employed by the Owner that is a breach of this Agreement; or (ii) an injunction against Owner or Owner's representatives;
- b. Class 2 causes: A Class 2 cause of delay is any other cause of delay not the responsibility of either the Owner or the Contractor, as defined herein. Such causes, include, but are not limited to inclement weather; acts of God; fire; riots; civil commotions; acts of War; unavoidable casualties to the Work in progress, except where insurance pays the cost of resulting delays or extended General Conditions costs; epidemics; quarantine restrictions; organized labor disputes; freight embargoes; unanticipated and undiscoverable environmental issues (except as to matters addressed in Article 10); abnormal labor and material shortages not customarily encountered or caused by events not reasonable foreseeable; or other cause traditionally defined as "force majeure." Any inclement weather causes of delay must include NOAA trend data for rain and temperature averages over the last 25 years to show it was not reasonably anticipated.

§ 9.22.3.5 If the basis exists for an extension of time and the Contractor has timely submitted a Claim documenting the basis for such extension, the Owner may exercise one of the following options:

- .1 For Class 1 causes, the Owner may accept a reasonable and appropriate time extension to cover such delay and grant a corresponding adjustment in the Contract Sum. The Contract Sum will be adjusted only to the extent of those necessary and reasonable on-site costs incurred by the field office and such other job site costs made necessary as a consequence of the delay;
- .2 For Class 2 causes, the Owner may accept a reasonable and appropriate time extension to cover such delay and there will be no corresponding adjustment in the Contract Sum. The Contractor's sole recourse will be entitlement to a time extension, regardless of actual sources or causes of delay;
- .3 The Owner may order the Contractor to accelerate construction activity by working overtime and by adding extra forces in order to overcome such delays, after the Contractor's submission to the Owner of a good faith estimate of the costs of such acceleration. The Owner may then adjust the Contract Sum compensate the Contractor for such directed acceleration. The Contractor's direct costs used in determining such adjustment to the Contract Sum are limited to properly substantiated and documented premium or overtime labor costs or other costs necessary to accomplish such acceleration; or
- .4 The Owner may employ a combination of the above remedies.

§ 9.22.3.6 Neither the Owner nor the Architect will be obligated or liable to Contractor for, and Contractor hereby expressly waives claims against Owner and Architect on account of, damages, costs, expenses, or related impacts that the Contractor, its Subcontractors, sub-subcontractors, suppliers, or other persons may incur as a result of a Class 2 cause. The Contractor likewise waives claims for damages, costs, or expenses incurred by the Contractor, its Subcontractors, sub-subcontractors, and suppliers due to a delay resulting from a Class 1 cause, except and solely to the extent of those costs allowed under Section 9.21.3.7, plus any necessary site-specific General Conditions costs incurred by the Contractor as a result of the delay.

§ 9.22.3.7 The Contractor is not entitled to a separate extension of the Contract Time for each one of the causes of delay that may have concurrent or interrelated effects on the progress of the Work. Concurrent causes of delay shall be considered a single delay. Furthermore, the Contractor is not entitled to an extension of time for concurrent delays that include delays due to the fault of the Contractor that, regardless of the delay caused by the Owner, increase the duration of the Work.

§ 9.22.3.8 The Contractor shall not be entitled to any additional compensation for its inability to complete the Work early (or prior to the date of Substantial Completion set forth in the Agreement) due to a Class 1 or Class 2 cause.

§ 9.22.3.9 Where a delay is not a Class 1 or Class 2 cause, the Contractor shall be responsible to reimburse the Owner for the cost of Additional Services of the Architect, if any, attributable to the delay.

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§ 9.23 PAYMENTS

§ 9.23.1 CONTRACT SUM

The Contract Sum is the total amount payable by the Owner to the Contractor for performance of the Work under the GMP Documents, subject to the Guaranteed Maximum Price.

§ 9.23.2 SCHEDULE OF VALUES

The Contractor shall submit to the Architect, before the first Application for Payment submitted for construction of the Work, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect or Owner may require. This schedule, once accepted by the Architect and the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.23.3 APPLICATIONS FOR PAYMENT

§ 9.23.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, for completed portions of the Work. Such application shall be notarized and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage provided for in the GMP Documents.

Copies of invoices and paid receipts are to be organized in the same sequence as the schedule of values. Each line item should have a copy of a calculator tape which sums up the invoices and paid receipts. For subcontractors' invoices, a G702 formatted pay application may be used. The Contractor shall submit an updated critical path schedule with each pay application showing whether or not the Work is on schedule. If the Work is not on schedule, the Contractor should provide recovery information on how the substantial completion will be achieved.

§ 9.23.3.1.1 As provided in Section 9.21.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.23.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.23.3.2 Unless otherwise provided in the GMP Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the reasonable and necessary costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.23.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.23.4 CERTIFICATES FOR PAYMENT

§ 9.23.4.1 The Architect will consult with the Owner as to each Application for Payment and, within seven days after receipt of the Contractor's properly completed and substantiated Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.23.5.1.

§ 9.23.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the

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quality of the Work is in accordance with the GMP Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the GMP Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the GMP Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will recommend payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.23.4.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 9.23.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.23.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.23.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.23.4.1. If the Contractor, Owner, and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 9.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 damage to the Owner or a separate contractor;
- .5 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .6 failure to carry out the Work in accordance with the GMP Documents;
- .7 failure to process submittals in accordance with the terms of this agreement.

§ 9.23.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.23.5.3 If the Architect withholds certification for payment under Section 9.23.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment. Owner is not required in any way to use, or refrain from use of, its rights in this clause for the benefit of any party for any reason.

§ 9.23.6 PROGRESS PAYMENTS

§ 9.23.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the GMP Documents, and shall so notify the Architect.

§ 9.23.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.23.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

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§ 9.23.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.23.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.23.6.2, 9.23.6.3 and 9.23.6.4.

§ 9.23.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work.

§ 9.23.6.7 [Number not Used]

§ 9.23.7 FAILURE OF PAYMENT

See South Carolina Code Ann. § 29-6-10 *et seq.*

§ 9.23.8 PARTIAL OCCUPANCY OR USE

§ 9.23.8.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the GMP Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 10.1.4. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.23.8.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.23.8.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the GMP Documents.

§ 9.24 PROTECTION OF PERSONS AND PROPERTY

§ 9.24.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 9.24.2 SAFETY OF PERSONS AND PROPERTY

§ 9.24.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby, most especially the staff and students on site;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors;
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction, and
- .4 finishes, fixtures, equipment, furniture, permanent signage, automobiles, artwork, display cases, memorabilia, electronics, textbooks, school supplies, library books, stored media in all formats,

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occupants' personal effects, and similar property normally encountered within the school environment.

§ 9.24.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 9.24.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 9.24.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 9.24.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the GMP Documents) to property referred to in Sections 9.24.2.1.2 and 9.24.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 9.24.2.1.2 and 9.24.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 9.18.

§ 9.24.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 9.24.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 9.24.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If Owner or Contractor suffers injury or damage to person or property because of an act or omission of the other, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other to investigate the matter.

§ 9.24.3 HAZARDOUS MATERIALS

§ 9.24.3.1 The Contractor is responsible for compliance with any requirements included in the GMP Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the GMP Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 9.24.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the GMP Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the

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Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 9.24.3.3 [Number not Used] *[Note: BCSD cannot indemnify third (3rd) parties. Look at managing this risk through Contractor's insurance program.]*

§ 9.24.3.4 The Owner shall not be responsible under this Section 9.24.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the GMP Documents. The Owner shall be responsible for materials or substances required by the GMP Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 9.24.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 9.24.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 9.24.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the GMP Documents, the Owner shall reimburse the Contractor for actual cost charged to the Contractor by the government agency.

§ 9.24.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 13 and Section 9.21.

§ 9.25 UNCOVERING AND CORRECTION OF WORK

§ 9.25.1 UNCOVERING OF WORK

§ 9.25.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the GMP Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 9.25.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the GMP Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the GMP Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 9.25.2 CORRECTION OF WORK

§ 9.25.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the GMP Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 9.25.2.2 AFTER SUBSTANTIAL COMPLETION

§ 9.25.2.2.1 In addition to the Contractor's obligations under Section 9.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.23.8.1, or by terms of an applicable special warranty required by the GMP Documents, any of the Work is found to be not in accordance with the requirements of the GMP Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable

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time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 9.25.2.7.

§ 9.25.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 9.25.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 9.25.2.

§ 9.25.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the GMP Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 9.25.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the GMP Documents.

§ 9.25.2.5 Nothing contained in this Section 9.25.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the GMP Documents. Establishment of the one-year period for correction of Work as described in Section 9.25.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the GMP Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 9.25.2.6 OWNER'S RIGHT TO STOP THE WORK

Upon commencement of the Work, if the Contractor fails to correct Work that is not in accordance with the requirements of the GMP Documents as required by Section 9.25.2 or repeatedly fails to carry out Work in accordance with the GMP Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 9.20.1.3.

§ 9.25.2.7 OWNER'S RIGHT TO CARRY OUT THE WORK

Upon commencement of the Work, if the Contractor defaults or neglects to carry out the Work in accordance with the GMP Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

§ 9.25.3 ACCEPTANCE OF NONCONFORMING WORK

If, after receiving the Architect's professional recommendation in writing, the Owner prefers to accept Work that is not in accordance with the requirements of the GMP Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

§ 9.26 ARCHITECT'S ADMINISTRATION OF THE CONTRACT

§ 9.26.1 The Architect shall provide administration of the Contract as set forth below.

§ 9.26.2 The Architect shall advise and consult with the Owner during the Construction Phase. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the GMP Documents. The

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Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 9.26.3 The Architect responsibility to administer the Contract terminates on the date the Architect issues the final Certificate for Payment.

§ 9.26.4 EVALUATIONS OF THE WORK

§ 9.26.4.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 1.5.4 in the Agreement between the Owner and Architect, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the GMP Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall create and distribute to the Project participants frequent site visit reports containing narrative and photographic progress updates and summaries of the site visit, and otherwise keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Project participants (1) known or suspected deviations from the GMP Documents and from the most recent construction schedule, and (2) known or suspected defects and deficiencies observed in the Work.

§ 9.26.4.2 The Architect has the authority to reject Work that does not conform to the GMP Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the GMP Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 9.26.4.3 The Architect, in consultation with the other Project participants, shall interpret and decide matters concerning performance under, and requirements of, the GMP Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 9.26.4.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the GMP Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the GMP Documents.

§ 9.26.5 SUBMITTALS

§ 9.26.5.1 The Architect shall review the Contractor's submittal schedule, if any, and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.

§ 9.26.5.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the GMP Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 9.26.5.3 If the GMP Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the

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appropriate performance and design criteria that such services must satisfy. The Architect shall review shop drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 9.26.5.4 The Architect shall review and respond to requests for information about the GMP Documents. The Architect shall set forth in the GMP Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 9.26.5.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the GMP Documents.

§ 9.26.5.6 The contractor shall arrange for monthly aerial photographs of the project site and distribute copies to BCSD and the Architect.

ARTICLE 10 CLOSEOUT PHASE

§ 10.1 PROJECT COMPLETION

§ 10.1.1 The Architect and its consultants shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the GMP Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the GMP Documents.

§ 10.1.2 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the GMP Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 10.1.3 The Architect's and Consultants' inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the GMP Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected. Work designed by Consultants pursuant to professional license(s) must be inspected and approved by the same professionally licensed Consultant or another principal in the Consultant's firm who holds the same professional license(s). The presence of the Owner or any third party during these inspections does not alter the responsibilities of the parties.

§ 10.1.4 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the GMP Documents.

§ 10.1.5 Upon receipt of the Contractor's list, the Architect and Consultants will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If these inspections disclose any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the GMP Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect and Consultants to determine Substantial Completion.

§ 10.1.6 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work, and

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shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the GMP Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 10.1.7 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the GMP Documents.

.1 The Architect shall incorporate all as-built data into the construction drawings and provide a PDF version of the construction drawings for the Owner within six (6) months of the contract substantial completion date. The PDF as-builts shall be organized so that there is a separate file for each sheet.

§ 10.1.8 After eleven (11) months after the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

.1 The Architect shall create and distribute to the Project participants a site visit report containing a narrative of any operational performance or warranty issues discovered and the report shall be provided within one week of site visit.

§ 10.1.9 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the GMP Documents.

§ 10.2 FINAL COMPLETION AND FINAL PAYMENT

§ 10.2.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect and relevant Consultants will promptly make such inspection and, when the Architect finds the Work acceptable under the GMP Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the GMP Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 10.2.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 10.2.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the GMP Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the GMP Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner.

§ 10.2.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the GMP Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

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- § 10.2.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from
- .1 Claims, security interests or encumbrances arising out of the Contract and unsettled;
 - .2 failure of the Work to comply with the requirements of the GMP Documents; or
 - .3 terms of special warranties required by the GMP Documents.

§ 10.2.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 After consultation with the Owner as to the insurance needs of the project, the Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations;
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 9.18; and
- .9 Other coverages, if any, as may be agreed upon.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the GMP Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the GMP Documents.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the GMP Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 The Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form mutually acceptable to the Contractor and the Owner in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the GMP Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 10.2 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.3.1.2 [Number not Used]

§ 11.3.1.3 The Contractor and the Owner shall consult and agree upon the amount and responsibility for the deductibles and the desirability of various endorsements and limits that may be available.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.23.8 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE

The Owner shall purchase and maintain boiler and machinery insurance required by the GMP Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of

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Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Owner and the Contractor shall file with each other a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

§ 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their Subcontractors, Sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Section 9.20, if any, and any of their Subcontractors, Sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Section 9.20, if any, and the Subcontractors, Sub-subcontractors, agents and employees of any of them, by appropriate written agreement, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 [Number not Used]

§ 11.3.9 [Number not Used]

§ 11.3.10 [Number not Used]

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Contractor must furnish bonds meeting the standards for such bonds stated in the South Carolina Consolidated Procurement Code covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the GMP Documents on the date of execution of the Contract.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

ARTICLE 12 MISCELLANEOUS PROVISIONS

§ 12.1 SUCCESSORS AND ASSIGNS

§ 12.1.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the GMP Documents. Except as provided in Section 12.1.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 12.1.2 [Number not Used]

§ 12.2 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 12.3 RIGHTS AND REMEDIES

§ 12.3.1 Duties and obligations imposed by the GMP Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 12.3.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

§ 12.4 TESTS AND INSPECTIONS

§ 12.4.1 Tests, inspections and approvals of portions of the Work shall be made as required by the GMP Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 12.4.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 12.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 12.4.3, shall be at the Owner's expense.

§ 12.4.3 If such procedures for testing, inspection or approval under Sections 12.4.1 and 12.4.2 reveal failure of the portions of the Work to comply with requirements established by the GMP Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 12.4.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the GMP Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 12.4.5 If the Architect is to observe tests, inspections or approvals required by the GMP Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 12.4.6 Tests or inspections conducted pursuant to the GMP Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 12.4.7 The Owner is required to obtain third-party IBC Chapter 1 and 17 inspections, but such inspectors are not agents of the Owner. The Owner is not responsible to the Contractor for errors or omissions by third-parties conducting IBC Chapter 17 testing of the Work.

§ 12.5 INTEREST

Payments due and unpaid under the GMP Documents shall bear interest from the date payment is due at the United States Prime Rate as listed in the Eastern print edition of the *Wall Street Journal* as of the date the payment becomes overdue.

§ 12.6 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with Article 13 within the time period specified by applicable law.

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ARTICLE 13 CLAIMS AND DISPUTES

§ 13.1 CLAIMS

§ 13.1.1 DEFINITION

A Claim is a demand or assertion by the Owner, or Contractor seeking, as a matter of right, payment of money, or other relief with respect to disputes and matters in question between arising out of or relating to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 13.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Architect as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 13.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.23.7 and Article 7 of the Owner-Contractor Agreement, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the GMP Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 13.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 9.24.4.

§ 13.1.5 CLAIMS FOR ADDITIONAL TIME

§ 13.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost (where otherwise allowable) and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 13.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ 13.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to the Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit.

This mutual waiver is applicable, without limitation, to all consequential damages due to the termination of the Owner-Contractor Agreement. Nothing contained in this Section 13.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the GMP Documents.

§ 13.2 INITIAL DECISION

§ 13.2.1 Claims arising after the commencement date of the Work, excluding those arising under Sections 9.24.3, 9.24.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Owner-Contractor Agreement. Except for those Claims excluded by this Section 13.2.1, an initial decision shall be required as a condition precedent to mediation of any such Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

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§ 13.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 13.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 13.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 13.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 13.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 13.2.6.1.

§ 13.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party participate in mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to agree to mediation within the time required or the parties do not agree to reserve the claim for later mediation, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 13.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 13.2.8 [Number not Used]

§ 13.3 MEDIATION

§ 13.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Project except those waived as provided for in Sections 10.2.4, 10.2.5, and 13.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 13.3.2 The parties shall endeavor to resolve their Claims by mediation before an agreed-upon neutral. A request for mediation shall be made in writing. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ 13.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in a location mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 13.4 [Number not Used]

(Paragraphs deleted)

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PAGE 1

New Elementary School at Foxbank Plantation
Berkeley County, South Carolina

...

THE SCHOOL DISTRICT OF BERKELEY COUNTY, SC
229 East Main Street
Moncks Corner, South Carolina 29461
Phone: (843) 899-8600
Fax: (843) 899-8791

...

McMillan Pazdan Smith Architecture
12A Vanderhorst Street
Charleston, South Carolina 29403
Ron G. Smith, Managing Principal Charleston
Phone: (843) 566-0771

...

Contract Construction, Inc.
P.O. Box 269
Ballentine, South Carolina 29002-0269
Greg Hughes, President
Phone: (803) 781-7058

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The Owner, Architect and Contractor have agreed to plan, design, and construct the Project in a collaborative environment following the principles of Integrated Project Delivery ~~and to utilize Building Information Modeling to~~ maximize the use of their knowledge, skills, and services for the benefit of the Project. The Architect and Contractor will deliver the Project in the following phases, which may overlap: Conceptualization, Criteria Design, Detailed Design, Implementation Documents, Construction and Closeout.

...

Berkeley County School District (BCSD) has provided as an attachment, a floor plan titled "Life Safety Plan- 1st Floor" for the Nexton Elementary School, to be used as a basis for the square footage and project budget. This initial programming document should be used as a starting point and validated through meetings with BCSD administration and staff.

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User Notes: (794977589)

...

The real property is currently located within the Foxbank Plantation development consisting of approximately twenty-four and 40/100 (24.40 acres, more or less and constitutes a portion of TMS# 197-00-01-008. This property is located on Foxbank Plantation Boulevard near the Yorkshire Drive intersection. Current configuration of the property is under development in relation to the location of fire station for Moncks Corner that is slated for construction in 2014. This property is a donation from Foxbank Ventures, LLC and will be subject to architectural approvals regarding compliance of the Foxbank Plantation development

...

The estimated construction budget for the Project is \$16,474,598.00 that includes location studies (environmental, geotechnical, wetlands, etc.), architect and engineer fees, permits, construction, and outfitting costs.

...

As soon as prudently possible

...

As soon as prudently possible

...

Occupy August 2018

...

N/A

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To be determined during preconstruction phase consultations.

...

BCSD's Facility Design Guidelines must be used. Owner places a high priority on life-cycle costs and not just construction costs.

...

Connie Myers, Capital Projects Manager, (843) 899-8505, Email: myersconnie@bcsdschools.net
Gene Sides, Lead Capital Projects Administrator, (843) 899-8393, Email: SidesG@bcsdschools.net

...

Archie Franchini, BCSD Deputy Superintendent, Office of Administration and Facility Services
(843) 899-8719, Email: FranchiniA@bcsdschools.net
Kim Glaze, Administrative Assistant for BCSD Deputy Superintendent
(843) 899-8629, Fax: (843) 899-8780, Email: GlazeK@bcsdschools.net

...

TBD

...

IBC Chapter 1 and Chapter 17 Inspectors required by Code to be provided by the Owner, per S.C. Office of School Facilities Inspection Program

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ADC Engineering Specialists
1226 Yeamsns Hall Road
Hanahan, South Carolina 29410
(843) 566-0161

...

RMF Engineering, Inc.
194 Seven Farms Drive, Suite G
Charleston, South Carolina 29492
(843) 971-9639

...

RMF Engineering, Inc.
194 Seven Farms Drive, Suite G
Charleston, South Carolina 29492
(843) 971-9639

...

.4 Other, if any:

- a. Civil Engineer**
Seamon Whiteside & Associates
501 Wando Park Boulevard, Suite 200
Mount Pleasant, South Carolina 29464
(843) 884-1667
- b. Food Service Consultant- TBD**

...

TBD

...

TBD

...

The Architect will conduct a series of community involvement public meetings during the programming and conceptualization phases (at least two (2) public meetings during programming and one (1) public meeting during conceptualization

The Contractor will conduct a series of community involvement public meetings during the preconstruction stage to present construction plans and schedule. The Contractor will conduct a small/ minority/ local business workshop to encourage participation.

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.1 Whether and to what extent any Model is appropriate for the Project will be determined by the parties during the first stages of the Pre-Construction Phase.

.1 The Owner's Budget for the Project (see § 2.2.3) includes the Budget for the Work, but also includes all other costs of the capital program the Owner assigns to the Project for Owner-supplied property and services, as well as Owner contingency funds. Owner costs that are not Cost of the Work shall nonetheless be included in the Integrated Project Delivery Team's planning and consultation processes, so that the Cost of the Project is controlled concurrent with any decisions affecting the Cost of the Work.

...

The Architect, Architect's consultants, Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized, solely and exclusively for use in completion of the Project, to use and reproduce the Instruments of Service provided to them. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Architect, Architect's consultants, Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use another author's Instruments of Service on other projects ~~or for additions to this Project~~ without the specific written consent of the Owner and the author of the Instruments of Service. ~~Service, or as otherwise provided by a relevant licensing agreement.~~

.1 The Drawings and Specifications physically signed and sealed by the design professional shall prevail over any conflicts between them and the digital forms of such drawings and specifications.

.2 The Architect/ Engineer will provide construction documents in PDF format to the Owner at no additional expense.

...

§ 1.7 Regular IPD Team Meetings will be scheduled by and through the Owner's Representative. Unless otherwise indicated by the Owner's Representative, each party shall be represented by appropriate staff at each meeting of the IPD Team. During the design phase the Architect shall take meeting minutes and distribute within one (1) week of meeting date and during the construction phase the Contractor shall take meeting minutes and distribute within one (1) week of meeting date.

...

.1 Unless directly communicated to the IPD team by one of the entities listed in the next subsection (§ 2.1.1.2) all decisions of the Owner may be deemed to be communicated by the Owner to the Architect and Contractor solely as and when communicated through the Owner's Representative.

.2 The only other persons who may make decisions as the "Owner" are:
(a) the Deputy Superintendent over the Office of Administration and Facility Services;
(b) the Superintendent;
(c) the Berkeley County Board of Education.

.3 By way of example and not exhaustion, the terms "Owner" and "Owner's Representative" do NOT include ANY staff not listed above, nor any individual or group providing input and commentary on the Project. Any "input" to be integrated into design and/or construction must be confirmed with the Owner's Representative in consultation with the IPD team, taking into account the entirety of the Project program, budget, schedule, aesthetics, and other relevant IPD team considerations.

§ 2.1.5 The Owner shall furnish to the Architect and Contractor, within fifteen days after receipt of a written request, information necessary and relevant to ~~evaluate, give notice of, or enforce mechanic's lien rights.~~ Such information shall include ~~a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.~~ give notice of project commencement.

...

.1 The IPD team will refine and develop the Program in the early Conceptualization Phase. The Community Meetings process will be a contributing source of information for finalizing the Program.

...

§ 2.2.4 Except for permits and fees that are the responsibility of the Contractor under the GMP Documents, including those required under Section 9.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for design, construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

...

§ 2.2.6 The Owner shall ~~furnish~~ furnish, if needed, services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

PAGE 18

§ 2.2.9 The Owner may satisfy its obligation to provide services pursuant to § 2.2.5, § 2.2.6, and § 2.2.7, by requesting the Architect to retain the providers of such services; provided however, that the Owner and Architect must first agree upon the provider and the estimated fees, rates, or other relevant cost structure. Such providers must present, where relevant to the service to be provided, satisfactory proof of professional responsibility insurance commensurate with the scope of services provided. Upon apparent satisfactory performance by the third party providers, the Owner will reimburse the Architect one hundred five percent (105%) of the actual cost for the agreed services. Consideration should be given to firms who have already performed similar work in the area since it would follow that their services should be less costly to BCSD.

...

§ 3.1.1 The Architect is the person or entity identified as such in this document and is referred to as if singular in number. The Architect shall be lawfully licensed to practice architecture or engineering or an entity lawfully practicing architecture or engineering in the jurisdiction where the Project is located. The Architect shall designate in writing a representative who shall have express authority to bind the Architect with respect to all matters related to the Project. The term "Architect" means the Architect and the authorized representative.

...

.1 Included in this scope is a series of Community Input meetings to be arranged by the Owner.
.2 The Architect shall update the Owner's Board at its meetings upon Owner request.

§ 3.2.3 The Architect shall ~~be entitled to rely on~~ consult with the Owner and Contractor regarding the accuracy and completeness of the Contractor's Estimates, as that term is defined in Section 4.2.3, as the Architect progresses with the preparation of the Criteria Design, Detailed Design and Implementation Documents. The Architect shall ~~prepare, as an Additional Service, revisions required due to inaccuracies or incompleteness in the Contractor's Estimates. The Architect shall review the Contractor's Estimates solely for the Architect's guidance in completion of its services, however, the Architect shall review the Contractor's Estimates, compare them with the current market information~~

known to the Architect, and report to the Owner any material inaccuracies and inconsistencies noted during any such review.

§ 3.2.4 The Architect shall, at appropriate times, contact the governmental authorities required to approve the GMP Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to and satisfy applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

.1 The Architect shall carefully study any existing Development Agreement which may apply to the real property obtained by the Owner and lead the effort to obtain any clarifications, approvals, waivers, or other administrative action that may be useful or necessary to the Project under the applicable development regime, as such Development Agreements may contain development constraints or other special requirements that vary from the development regulations otherwise in force in Berkeley County.

PAGE 19

§ 3.2.6 The Architect shall perform a quality assurance check on the final design documents and show the list of items to be corrected and how they were corrected. A quality check from a third party consultant is encouraged.

...

§ 4.1.1 The Contractor is the person or entity identified as such in this document and is referred to as if singular in number. The Contractor shall be lawfully ~~licensed, if required~~ licensed in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters related to the Project. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 4.1.2 If the employment of the Contractor is ~~terminated but the Project is not terminated~~, the Owner shall employ a successor contractor ~~as to whom the Architect has no reasonable objection and whose status under the GMP Documents shall be that of the Contractor.~~

PAGE 20

§ 5.1 The Owner, Architect and Contractor shall review the program developed and furnished by the Owner to ascertain the requirements of the Project and shall arrive at a mutual understanding of those requirements. The Architect shall present its preliminary evaluation to the Owner and Contractor and discuss possible alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding in writing with the Owner and Contractor regarding the requirements of the Project.

...

§ 6.2.1 ~~The Architect~~ Together, the Architect, Contractor, and Owner shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and Budget for the Work. The Owner may obtain other environmentally responsible design accreditation, grant writing, and similar advanced services involving additional consultants or outside parties, as an Additional Service.

§ 6.2.2 ~~The Architect shall consider~~ Together, the Architect, Contractor, and Owner shall consider life-cycle costs, and the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics in developing a design for the Project that is consistent with the Owner's schedule and Budget for the Work.

PAGE 21

§ 6.4 The Contractor shall obtain information from potential Subcontractors and material suppliers regarding proposed systems or products, including material procurement scheduling, product data sheets, life cycle and energy efficiency data, cost data necessary to validate estimates and schedules for their scopes of work, tolerances, and prefabrication opportunities.

...

§ 7.4 The Contractor shall provide updates to the Contractor's Estimate and the Project schedule to ensure consistency with the Detailed Design Documents and to incorporate information received from potential Subcontractors and material suppliers pursuant to Section 6.4. The Contractor shall ~~require any such Subcontractors and material suppliers to provide obtain~~ additional information as needed to coordinate systems, including mechanical, electrical, plumbing and structural, and to verify tolerances.

PAGE 23

§ 9.1.2 The Contractor shall not be relieved of obligations to perform the Work in accordance with the GMP Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the ~~Contractor-Contractor~~, including but not limited to International Building Code Chapter 1 and Chapter 17 inspections and inspection reports.

...

.1 The Contractor shall ascertain and factor into its GMP any special, local restrictions, such as HOA rules, applicable to the Work (e.g. working hours, jobsite screening, etc.)

PAGE 24

.1 As required by S.C. Code § 8-14-20, the Contractor agrees to register and participate in the federal work authorization program to verify the employment authorization of all new employees and require agreement from its subcontractors, and through the subcontractors, the sub-subcontractors, to register and participate in the federal work authorization program to verify the employment authorization of all new employees.

.2 As required by S.C. Code § 8-14-40, the Contractor will comply with the requirements of Title 8, chapter 14 of the Code of Laws and agrees to provide to the Owner any documentation required to establish either: (a) the applicability of this chapter to the contractor, subcontractor, and sub-subcontractor; or (b) the compliance with this chapter by the contractor and any subcontractor or sub-subcontractor

...

§ 9.4.4 CRIMINAL HISTORY CHECKS

The Contractor and each subcontractor of any tier shall:

.1 Perform a Sex Offender Registry search, through <http://services.sled.sc.gov/sor/> or a comparable service with the same level of access to the National Sex Offender Registry, for each employee to be assigned to labor at the site. An employee who is on the National Sex Offender shall not be assigned duties at the site of the Project.

.2 Perform a SLED CATCH check on employees to be assigned to labor at the site, and not assign an employee to the site of the Project without the written consent of the Owner if the employee has been convicted of a crime of violence, a crime affecting minors, enticing enrolled child from attendance in school (§16-17-510); disturbing schools (§16-17-420); contributing to delinquency of a minor (§16-17-490); or the comparable criminal provisions of another jurisdiction.

.3 Retain and make available for inspection by the Contractor and the District (or its agents) documents evidencing compliance with these requirements.

.4 Bring to the Owner's attention information indicating that an employee is currently the subject of an active prosecution for violating any of the above criminal provisions.

.5 Owner retains the right to exercise sole discretion to exclude any person whose presence and criminal history indicate a concern about the security and safety of the persons or property at the Project site. The Owner may set different standards of access based on the phasing, student and staff occupancy status, and other characteristics of the work conditions.

.6 For purposes of this § 9.4., the Owner's intent is to require checks only for employees who have sufficient access to the staff and property at the project site to warrant an extra measure of security. All others whose presence is brief and/or supervised, such as manufacturer representatives, deliverymen, home office management and staff, couriers, and inspectors, are not required to be run through these procedures.

.7 To the extent not already exempted by this paragraph, also excluded from the checks required by this § 9.4.4 are persons performing professional duties at the Project pursuant to a professional license from the State issued personally to that professional.

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the GMP Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the GMP Documents and will be free from defects, except for those inherent in the quality of the Work the GMP Documents require or permit. Work, materials, or equipment not conforming to these requirements ~~may be considered is~~ defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

PAGE 25

~~§ 9.7.1 Unless otherwise provided in the GMP Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured and legally required at the time the Guaranteed Maximum Price is established.~~

PAGE 26

~~§ 9.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection. [Number not Used]~~

~~§ 9.9.3 The Contractor shall not employ a proposed project manager or superintendent to whom the Owner or Architect has made reasonable and timely objection. object. The Contractor shall not change the project manager or superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.~~

PAGE 27

§ 9.12.1 Shop Drawings are drawings, diagrams, models, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work. If the Architect is entitled to Additional Services because of the deficiencies in the Contractor's submittals, then the Contractor will bear the cost of the Additional Services.

PAGE 28

The Contractor shall confine operations at the site to times and areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities ~~lawful orders of public authorities,~~

reasonable directions of the Owner consistent with the needs of use of the sites as functioning public school facilities, and the GMP Documents and shall not unreasonably encumber the site with materials or equipment.

...

§ 9.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of various phases or locations of the Work, or when an area is otherwise meant to be returned to Owner use temporarily according to phasing and safety plans, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about ~~the Project, that portion of the site,~~

PAGE 29

§ 9.19.2.1 ~~Unless otherwise stated in the GMP Documents the Contractor, as soon as practicable after execution of the Contract, shall furnish in writing to the Owner and Architect. The Owner and the Architect shall have full access to Contractor's buy-out of the Project. The Contractor shall include in its GMP Proposal the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner and Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that additional time is required for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.~~

...

~~By appropriate agreement, written where legally required for validity, the Contractor shall require each Each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be is bound to the Contractor by terms of the GMP Documents, and to assume assumes toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the GMP Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the GMP Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Each Subcontract contains the same agreements with regard to Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the GMP Documents and other documents to which the Subcontractor will be bound.~~

...

- .2 assignment is subject to the prior rights of the ~~surety, if any, obligated surety~~ obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the ~~Contractor's rights and obligations under the subcontract~~ prospective rights and obligations under the subcontract to complete the subcontractor's Work, but the Contractor remains responsible for any liability theretofore accrued to the subcontractor and for any claims of the subcontractor arising from or relating back to Work of the subcontractor prior to assignment.

PAGE 30

§ 9.19.4.3 Upon such assignment to the Owner under this Section 9.19.4, the Owner may further assign the subcontract to a successor contractor or other entity. ~~If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.~~

...

§ 9.20.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to Each Contractor shall pay costs incurred by a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

PAGE 32

§ 9.21.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Owner-Contractor Agreement, or if no such amount is set forth in the Owner-Contractor Agreement, a reasonable amount below. In such case, and also under Section 9.21.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the GMP Documents, costs for the purposes of this Section 9.21.3.7 shall be limited to the following: following, and only in reasonable amounts:

- .1 Costs of labor, including social security, old age security and unemployment insurance, fringe benefits required by agreement or custom, agreement, and workers' compensation insurance;

...

- .6 Limit on percent markup for overhead and profit on change orders is as follows: Self performing work is limited to a maximum of 15%; overhead and profit on subcontractor work is 7%.

...

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time-Time, if not inconsistent with Owner instructions to the Architect and not inconsistent with the intent of the GMP Documents. Prior to issuing a Minor Change, the Architect shall notify the Contractor and the Owner of the nature, extent and anticipated time of issuance of the proposed directive. The Architect and Contractor shall make adjustments to the GMP Documents to reflect the proposed directive for the review of the Owner, Architect and Contractor. The Contractor ~~should~~ must determine the effect of the proposed directive on the cost and time of completion of the Work and on the Contractor's ability to construct the work in accordance with the revised GMP Documents and provide appropriate recommendations to the Owner and Architect. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

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§ 9.22.1.2 The date of Substantial Completion is the date certified by the Architect in accordance with Section 10.1. An Office of School Facilities ("OSF") occupancy permit does not suffice to certify Substantial Completion for purposes of these Contract Documents.

...

§ 9.22.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, causes that justify delay, as more specifically addressed in the following subsections, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

§ 9.22.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 13. The Contractor waives any Claim relating to time that is not made in accordance with applicable provisions of Article 13. The Contractor also waives and releases any Claim for additional costs of any nature premised upon the Owner's failure to give an extension of time, unless the Contractor has given to the Owner and Architect, within the applicable time limits set forth in the Contract Documents, a proper Claim for the time.

§ 9.22.3.3 This Section 9.22.3 does not preclude recovery of damages for delay by either party under other provisions of the GMP Documents. The Contractor is not entitled to an extension of time, compensation of any nature, costs, or damages, if the Contractor is delayed by an event or the occurrence of any risk, either of which was within the scope of the Contractor's contractual responsibility to foresee, estimate, predict, acquire, control, plan for, contract for, and manage in order to accomplish the Work required by the Contract Documents. The Contractor's responsibilities include, but are not limited to, the following:

- .1 Anticipating and accounting for variable and inconsistent labor, materials, supplies, and site access;
- .2 Subcontractor and supplier insolvency, default, non-performance (including the performance and correction of non-conforming work), and financial non-responsibility; and
- .3 Other events for which the Contractor has the risk of anticipating and managing in order to accomplish the Work within the price and time called for in the Contract. Assessment of the existence of the basis for a time extension shall be determined by the Contractor's construction schedule.

§ 9.22.3.4 A basis may exist for an extension of time if:

- .1 The Contractor is delayed in performing the Work, but solely to the extent that delays are caused by events that are beyond the control and/or contractual responsibility of the Contractor, its subcontractors, sub-subcontractors, and suppliers at every tier;
- .2 Delays directly impact the Contractor's ability to achieve Completion of the Work in accordance with the Contract Time requirements established by the Contract Documents, as amended by executed Change Order;
- .3 Delays cannot be made up by reasonable efforts; and
- .4 Delays stem from the following causes:
 - a. Class 1 causes: (i) an act or failure to act on the part of the Owner, any consultant or employee of the Owner, or of a separate contractor employed by the Owner that is a breach of this Agreement; or (ii) an injunction against Owner or Owner's representatives;
 - b. Class 2 causes: A Class 2 cause of delay is any other cause of delay not the responsibility of either the Owner or the Contractor, as defined herein. Such causes, include, but are not limited to inclement weather; acts of God; fire; riots; civil commotions; acts of War; unavoidable casualties to the Work in progress, except where insurance pays the cost of resulting delays or extended General Conditions costs; epidemics; quarantine restrictions; organized labor disputes; freight embargoes; unanticipated and undiscoverable environmental issues (except as to matters addressed in Article 10); abnormal labor and material shortages not customarily encountered or caused by events not reasonable foreseeable; or other cause traditionally defined as "force majeure." Any inclement weather causes of delay must include NOAA trend data for rain and temperature averages over the last 25 years to show it was not reasonably anticipated.

§ 9.22.3.5 If the basis exists for an extension of time and the Contractor has timely submitted a Claim documenting the basis for such extension, the Owner may exercise one of the following options:

- .1 For Class 1 causes, the Owner may accept a reasonable and appropriate time extension to cover such delay and grant a corresponding adjustment in the Contract Sum. The Contract Sum will be adjusted only to the extent of those necessary and reasonable on-site costs incurred by the field office and such other job site costs made necessary as a consequence of the delay;
- .2 For Class 2 causes, the Owner may accept a reasonable and appropriate time extension to cover such delay and there will be no corresponding adjustment in the Contract Sum. The Contractor's sole recourse will be entitlement to a time extension, regardless of actual sources or causes of delay;
- .3 The Owner may order the Contractor to accelerate construction activity by working overtime and by adding extra forces in order to overcome such delays, after the Contractor's submission to the Owner of a good faith estimate of the costs of such acceleration. The Owner may then adjust the Contract Sum compensate the Contractor for such directed acceleration. The Contractor's direct costs used in determining such adjustment to the Contract Sum are limited to properly substantiated and documented premium or overtime labor costs or other costs necessary to accomplish such acceleration; or
- .4 The Owner may employ a combination of the above remedies.

§ 9.22.3.6 Neither the Owner nor the Architect will be obligated or liable to Contractor for, and Contractor hereby expressly waives claims against Owner and Architect on account of, damages, costs, expenses, or related impacts that the Contractor, its Subcontractors, sub-subcontractors, suppliers, or other persons may incur as a result of a Class 2 cause. The Contractor likewise waives claims for damages, costs, or expenses incurred by the Contractor, its Subcontractors, sub-subcontractors, and suppliers due to a delay resulting from a Class 1 cause, except and solely to the extent of those costs allowed under Section 9.21.3.7, plus any necessary site-specific General Conditions costs incurred by the Contractor as a result of the delay.

§ 9.22.3.7 The Contractor is not entitled to a separate extension of the Contract Time for each one of the causes of delay that may have concurrent or interrelated effects on the progress of the Work. Concurrent causes of delay shall be considered a single delay. Furthermore, the Contractor is not entitled to an extension of time for concurrent delays that include delays due to the fault of the Contractor that, regardless of the delay caused by the Owner, increase the duration of the Work.

§ 9.22.3.8 The Contractor shall not be entitled to any additional compensation for its inability to complete the Work early (or prior to the date of Substantial Completion set forth in the Agreement) due to a Class 1 or Class 2 cause.

§ 9.22.3.9 Where a delay is not a Class 1 or Class 2 cause, the Contractor shall be responsible to reimburse the Owner for the cost of Additional Services of the Architect, if any, attributable to the delay.

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The Contractor shall submit to the Architect, before the first Application for Payment submitted for construction of the Work, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect ~~may require. This schedule, unless objected to by the Architect, or Owner may require.~~ This schedule, once accepted by the Architect and the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

...

§ 9.23.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, ~~if required under Section 9.23.2, for completed portions of the Work. Such application shall be notarized, if required, notarized and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the GMP Documents.~~

Copies of invoices and paid receipts are to be organized in the same sequence as the schedule of values. Each line item should have a copy of a calculator tape which sums up the invoices and paid receipts. For subcontractors' invoices, a G702 formatted pay application may be used. The Contractor shall submit an updated critical path schedule with each pay application showing whether or not the Work is on schedule. If the Work is not on schedule, the Contractor should provide recovery information on how the substantial completion will be achieved.

...

§ 9.23.3.2 Unless otherwise provided in the GMP Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the reasonable and necessary costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

...

§ 9.23.4.1 The Architect ~~will,~~ will consult with the Owner as to each Application for Payment and, within seven days after receipt of the Contractor's properly completed and substantiated Application for Payment, either issue to the

Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.23.5.1.

§ 9.23.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the GMP Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the GMP Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the GMP Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will ~~further constitute a representation that the Contractor is entitled to recommend~~ payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

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§ 9.23.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.23.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.23.4.1. If the ~~Contractor-Contractor, Owner, and Architect~~ cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 9.3.2, because of

...

- .5 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .6 ~~repeated failure to carry out the Work in accordance with the GMP Documents- Documents;~~
- .7 failure to process submittals in accordance with the terms of this agreement.

...

§ 9.23.5.3 If the Architect withholds certification for payment under Section 9.23.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment. Owner is not required in any way to use, or refrain from use of, its rights in this clause for the benefit of any party for any reason.

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§ 9.23.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of ~~Work not in accordance with the GMP Documents-Work.~~

§ 9.23.6.7 ~~Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary~~

liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision. [Number not Used]

...

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the GMP Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the GMP Documents. See South Carolina Code Ann. § 29-6-10 *et seq.*

...

- .1 employees on the Work and other persons who may be affected thereby; thereby, most especially the staff and students on site;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction-construction, and
- .4 finishes, fixtures, equipment, furniture, permanent signage, automobiles, artwork, display cases, memorabilia, electronics, textbooks, school supplies, library books, stored media in all formats, occupants' personal effects, and similar property normally encountered within the school environment.

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§ 9.24.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 9.24.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity. [Number not Used] [Note: BCSD cannot indemnify third (3rd) parties. Look at managing this risk through Contractor's insurance program.]

...

§ 9.24.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the GMP Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred, reimburse the Contractor for actual cost charged to the Contractor by the government agency.

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If If, after receiving the Architect's professional recommendation in writing, the Owner prefers to accept Work that is not in accordance with the requirements of the GMP Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

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§ 9.26.4.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 1.5.4 in the Agreement between the Owner and Architect, to become generally familiar with the progress

and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the GMP Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall create and distribute to the Project participants frequent site visit reports containing narrative and photographic progress updates and summaries of the site visit, and otherwise keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner-Project participants (1) known or suspected deviations from the GMP Documents and from the most recent construction schedule, and (2) known or suspected defects and deficiencies observed in the Work.

...

§ 9.26.5.1 The Architect shall review the Contractor's submittal schedule, if any, and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule ~~or, in the absence of an approved submittal schedule, or~~ with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.

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§ 9.26.5.6 The contractor shall arrange for monthly aerial photographs of the project site and distribute copies to BCSD and the Architect.

...

§ 10.1.1 The Architect and its consultants shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the GMP Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the GMP Documents.

...

§ 10.1.3 The Architect's and Consultants' inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the GMP Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected. Work designed by Consultants pursuant to professional license(s) must be inspected and approved by the same professionally licensed Consultant or another principal in the Consultant's firm who holds the same professional license(s). The presence of the Owner or any third party during these inspections does not alter the responsibilities of the parties.

...

§ 10.1.5 Upon receipt of the Contractor's list, the Architect and Consultants will make an inspection to determine whether the Work or designated portion thereof is substantially complete. ~~If the Architect's inspection discloses these inspections disclose~~ any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the GMP Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect and Consultants to determine Substantial Completion.

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.1 The Architect shall incorporate all as-built data into the construction drawings and provide a PDF version of the construction drawings for the Owner within six (6) months of the contract substantial completion date. The PDF as-builts shall be organized so that there is a separate file for each sheet.

§ 10.1.8 ~~Upon request of the Owner, and prior to the expiration of one year from~~ After eleven (11) months after the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

~~.1 The Architect shall create and distribute to the Project participants a site visit report containing a narrative of any operational performance or warranty issues discovered and the report shall be provided within one week of site visit.~~

...

§ 10.2.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect and relevant Consultants will promptly make such inspection and, when the Architect finds the Work acceptable under the GMP Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the GMP Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 10.2.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 10.2.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the GMP Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the GMP Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. ~~If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.~~

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~~.1 Liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;~~

...

§ 11.1.1 ~~The After consultation with the Owner as to the insurance needs of the project, the Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:~~

...

- ~~.7 Claims for bodily injury or property damage arising out of completed operations; and~~
- ~~.8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 9.18.9.18; and~~
- ~~.9 Other coverages, if any, as may be agreed upon.~~

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~~§ 11.3.1 Unless otherwise provided, the Owner~~ The Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form mutally acceptable to the Contractor and the Owner in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the GMP Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 10.2 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

...

~~§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.~~ [Number not Used]

~~§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles. The Contractor and the Owner shall consult and agree upon the amount and responsibility for the deductibles and the desirability of various endorsements and limits that may be available.~~

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~~§ 11.3.6 Before an exposure to loss may occur, the Owner and the Contractor shall file with the Contractor each other~~ a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

...

The Owner and Contractor waive all rights against (1) each other and any of their Subcontractors, Sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Section 9.20, if any, and any of their Subcontractors, Sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such ~~insurance held by the Owner as fiduciary insurance~~. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Section 9.20, if any, and the Subcontractors, Sub-subcontractors, agents and employees of any of them, by appropriate ~~agreements, written where legally required for validity, written agreement~~, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

~~§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.~~ [Number not Used]

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Section 9.21. [Number not Used]

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators. [Number not Used]

...

§ 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds Contractor must furnish bonds meeting the standards for such bonds stated in the South Carolina Consolidated Procurement Code covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the GMP Documents on the date of execution of the Contract.

...

§ 12.1.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the GMP Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment. [Number not Used]

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§ 12.4.7 The Owner is required to obtain third-party IBC Chapter 1 and 17 inspections, but such inspectors are not agents of the Owner. The Owner is not responsible to the Contractor for errors or omissions by third-parties conducting IBC Chapter 17 testing of the Work.

Payments due and unpaid under the GMP Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located, the United States Prime Rate as listed in the Eastern print edition of the Wall Street Journal as of the date the payment becomes overdue.

...

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with Article 13 within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 12.6. law.

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Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

...

§ 13.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost ~~(where otherwise allowable)~~ and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

...

- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of ~~profit except anticipated profit arising directly from the Work profit.~~

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§ 13.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties ~~and the Architect, if the Architect is not serving as the Initial Decision Maker,~~ of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

...

§ 13.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party ~~file for participate in mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, to agree to mediation within the time required or the parties do not agree to reserve the claim for later mediation, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.~~

...

§ 13.2.8 ~~If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.~~ [Number not Used]

...

§ 13.3.2 The parties shall endeavor to resolve their Claims by mediation which, ~~unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Owner-Contractor Agreement, before an agreed-upon neutral. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation.~~ The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. ~~If an arbitration is stayed pursuant to this Section 13.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~

§ 13.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place ~~where the Project is located, unless another location is a location~~ mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 13.4 ARBITRATION [Number not Used]

~~§ 13.4.1 Any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the Owner and Contractor mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Owner-Contractor Agreement. A demand for arbitration shall be made in writing, delivered to the other parties, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.~~

~~§ 13.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.~~

~~§ 13.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

~~§ 13.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Owner-Contractor Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.~~

~~§ 13.4.4 CONSOLIDATION OR JOINDER~~

~~§ 13.4.4.1 The Owner and Contractor, at their individual discretion, may consolidate an arbitration conducted under Owner-Contractor Agreement with any other arbitration to which they are a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~

~~§ 13.4.4.2 The Owner and Contractor, at their individual discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~

~~§ 13.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 13.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under the Owner-Contractor Agreement.~~

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, _____, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 11:13:59 on 12/11/2013 under Order No. 5662467476_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A295™ – 2008, General Conditions of the Contract for Integrated Project Delivery, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

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AIA[®] Document B195[™] – 2008

Standard Form of Agreement Between Owner and Architect for Integrated Project Delivery

AGREEMENT made as of the tenth day of December in the year two thousand thirteen 2013

(In words, indicate day, month and year.)

BETWEEN the Owner:

(Name, legal status, address and other information)

The School District of Berkeley County, South Carolina 229 East Main Street Moncks Corner, South Carolina 29461 Phone: (843) 899-8600 Fax: (843) 899-8791

and the Architect:

(Name, legal status, address and other information)

McMillan Pazdan Smith Architecture 12-A Vanderhorst Street Charleston, South Carolina 29403 Ron G. Smith, Managing Principal Charleston Phone: (843) 566-0771

for the following Project:

(Name, location and detailed description)

New Elementary School at Foxbank Plantation
Berkeley County School District
Berkeley County, South Carolina

for which Project the Contractor is:

(Name, legal status, address and other information)

Contract Construction, Inc. P.O. Box 269 Ballentine, South Carolina 29002-0269 Greg Hughes, President Phone: (803) 781-7058

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Init.

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TABLE OF ARTICLES

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- 2 OWNER'S RESPONSIBILITIES
- 3 COPYRIGHTS AND LICENSES
- 4 COMPENSATION
- 5 DISPUTE RESOLUTION
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- 8 SPECIAL TERMS AND CONDITIONS
- 9 SCOPE OF THE AGREEMENT

ARTICLE 1 ARCHITECT'S SERVICES AND RESPONSIBILITIES

§ 1.1 The Architect shall provide the professional services set forth in AIA Document A295™-2008 General Conditions of the Contract for Integrated Project Delivery, which is incorporated herein by reference, except as specifically indicated to be the responsibility of others. Such services shall include usual and customary structural, mechanical, and electrical engineering services with compliance to SCDOE OSF Guidelines and BCSD Facility Design Guidelines and as delineated in the Architect's proposal submitted in response to RFQ#396-(13-14)

§ 1.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 1.3 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 1.4 The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost:

(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)

.1 General Liability

One Million (\$1,000,000.00) per occurrence/ One Million (\$1,000,000.00) aggregate

.2 Automobile Liability

Statutory Minimum

.3 Workers' Compensation

Statutory Minimum

.4 Professional Liability

Architect: One Million (\$1,000,000.00) per claim/ One Million (\$1,000,000.00) aggregate

Consultants: One Million (\$1,000,000.00) per claim/ One Million (\$1,000,000.00) aggregate

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§ 1.5 ADDITIONAL SERVICES

§ 1.5.1 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 1.5 shall entitle the Architect to compensation pursuant to Section 4.2 and an appropriate adjustment in the Architect's schedule.

§ 1.5.2 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information set forth in A295-2008, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement method;
- .2 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or sustainability certification programs;
- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations; except OSF/ Fire Marshal interpretations.
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital data, in a format other than previously agreed to, for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;
- .6 Preparation of design and documentation for changes the Owner requests after acceptance of the Guaranteed Maximum Price when construction costs exceed \$25,000.00.
- .7 [Number not Used]
- .8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding where a civil action has been filed in the judicial system, except where the Architect is party thereto;
- .9 [Number not Used]
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction.

§ 1.5.3 To avoid a delay on the Project after the establishment of the Guaranteed Maximum Price, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the GMP Documents or where such information is available to the Contractor from a careful study and comparison of the GMP Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 [Number not Used]
- .4 [Number not Used]
- .5 To the extent the Architect's services required by Section 1.1 are affected, providing Construction Phase services 60 days after the date of Substantial Completion of the Work.

§ 1.5.4 The Architect shall provide Construction Phase services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor
- .2 An average of bi-weekly visits to the site by the Architect over the duration of the Project during construction
- .3 Two (2) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the GMP Documents
- .4 Two (2) inspections for any portion of the Work to determine final completion

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§ 1.5.5 If the services covered by this Agreement have not been completed within forty-eight (48) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated equitably in light of demonstrated additional performance costs incurred by the Architect.

ARTICLE 2 OWNER'S RESPONSIBILITIES

The Owner's responsibilities are as set forth in the accompanying A295-2008.

ARTICLE 3 COPYRIGHTS AND LICENSES

§ 3.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 3.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 3.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service for the Owner's statutory duties and purposes. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services for the Project. The license also includes the Owner's right to provide the Instruments of Service to other Architects retained by the Owner for reference and consistency purposes in preparing future Instruments of Service for the Owner's needs at the Project or other Owner projects; the use of design concepts from the Instruments of Service for future projects is not in derogation of the license provided the resulting design is sealed and issued solely under the professional license(s) of a design professional then under contract to the Owner.

§ 3.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The terms of this Section 3.3.1 shall not apply to the use of the Instruments of Service for the Project if the Owner rightfully terminates this agreement for cause under Article 6.

§ 3.4 Except for the licenses granted in this Article 3, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

ARTICLE 4 COMPENSATION

§ 4.1 The Owner shall compensate the Architect for services described in Section 1.1 as set forth below.

(Insert amount of, or basis for, compensation or indicate the exhibit in which compensation is provided for.)

Five (5%) percent of the GMP

§ 4.2 For Additional Services that may arise during the course of the Project, including those under Section 1.5, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

The Architect shall submit a scope and costs for any additional services prior to starting such services. Once the proposal is received, the Owner will respond within seven (7) days.

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§ 4.3 Compensation for Additional Services of the Architect's consultants when not included in Section 4.2, shall be the amount invoiced to the Architect plus five percent (5 %).

As part of this contract, the Architect shall include proposals from consultants for completing boundary and topographical survey, geotechnical report, environmental phase I report, SCDOT site traffic report, and other similar studies as required to fully describe the site. Upon written authorization, the Architect shall procure these services on behalf of the Owner as a Reimbursable Expense.

§ 4.4 Where compensation for Services described in Section 1.1 is based on a stipulated sum or percentage of the Guaranteed Maximum Price, the compensation for each phase of services shall be as follows:

Conceptualization Phase:	Ten	percent (	10	%)
Criteria Design Phase:	Twenty	percent (	20	%)
Detailed Design Phase:	Twenty	percent (	20	%)
Implementation Documents Phase:	Twenty-five	percent (	25	%)
Construction Phase:	Twenty	percent (	20	%)
Closeout Phase:	Five	percent (	5	%)
Total Basic Compensation	one hundred	percent (	100	%)

§ 4.5 When compensation is based on a percentage of the Guaranteed Maximum Price, compensation for services performed prior to establishment of the Guaranteed Maximum Price will be based upon the most recent Contractor's Estimate, as that term is defined in Section 4.2.3 of A295-2008. When compensation for Services described in Section 1.1 is based on a percentage of the Guaranteed Maximum Price and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 4.4 based on (1) the Guaranteed Maximum Price, or (2) until such time as the Guaranteed Maximum Price is established, the Owner's most recent Budget for the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the construction of the Work commenced.

§ 4.6 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices. *(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

See attached exhibit of hourly billing rates.

§ 4.7 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 4.7.1 Reimbursable Expenses are in addition to compensation for the Architect's professional services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 [Number not Used]
- .2 [Number not Used]
- .3 [Number not Used]
- .4 Printing, reproductions, plots, standard form documents; the Architect should strive to competitively bid out reproduction costs and to use electronic distribution as much as possible to control costs.
- .5 Postage, handling and delivery; the Architect should strive to use the least expensive service;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner (except materials created for community and district input meetings and Board of Education reports and presentations).
- .8 [Number not Used]
- .9 [Number not Used]
- .10 [Number not Used]
- .11 Other similar Project-related expenditures.

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§ 4.7.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus an administrative fee of five percent (5 %) of the expenses incurred.

§ 4.8 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE

If the Owner terminates the Architect for its convenience under Section 6.5, or the Architect terminates this Agreement under Section 6.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of the Project as follows:

One dollar (\$1.00).

§ 4.9 PAYMENTS TO THE ARCHITECT

§ 4.9.1 [Number not Used].

§ 4.9.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

(Insert rate of monthly or annual interest agreed upon.)

5.00 % per annum

§ 4.9.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect.

§ 4.9.4 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be provided with each invoice.

ARTICLE 5 DISPUTE RESOLUTION

§ 5.1 The Owner and Architect shall resolve any claim or cause of action arising out of or relating to this Agreement pursuant to the provisions set forth in the Project's customized form of the A295-2008.

§ 5.2 [Number not Used]

§ 5.3 To the extent damages are covered by property insurance, and the relevant policy permits, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in A295-2008. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 5.3.1 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 6.7.

ARTICLE 6 TERMINATION OR SUSPENSION

§ 6.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 6.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the

Init.

interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 6.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 6.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 6.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 6.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 6.7.

§ 6.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated.

§ 6.8 [Number not Used]

ARTICLE 7 MISCELLANEOUS PROVISIONS

§ 7.1 This Agreement shall be governed by the law of the place where the Project is located.

§ 7.2 Terms in this Agreement shall have the same meaning as those in AIA Document A295-2008.

§ 7.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

§ 7.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 7.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 7.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 7.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 7.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person other than as may be required by law, except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

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ARTICLE 8 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

1. The Architect will provide an electronic version of as-builts of the Project at the completion of construction; each drawing will be a separate PDF file and be named the same as the drawings sheet numbering scheme.
2. The Architect will provide after substantial completion, an 11th month warranty inspection with written report.
3. The Architect will provide assistance to the Owner's procurement process for evaluation of the contractors.
4. The Architect will conduct a series of District input meetings during the programming and conceptualization phases for the School Administrators/ Staff, the District Office Cabinet staff, the Facilities/ Maintenance Department, the Food Services Department, and IT Department.
5. The Architect will conduct a series of community involvement public meetings during the programming and conceptualization phases (at least two (2) public meetings during programming and one (1) public meeting during conceptualization).
6. The Architect will make presentations to the School Board about programming efforts/ design features/ public input ideas/ budget/ schedule during the "Detailed Design Phase" and prior to the completion of the construction documents.
7. The Architect will prepare and submit a two (2) page executive summary report on a monthly basis containing budget/ cost information, schedule, work progress summary, potential changes, and photographs at the 10th of each month.
8. The Architect will provide a written field report within five (5) days of each site visit during the construction phase.
9. The Architect will provide meeting notes within seven (7) days after the meeting during the design phase.

ARTICLE 9 SCOPE OF THE AGREEMENT

§ 9.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 9.2 This Agreement is comprised of the following documents listed below:

1. AIA Document B195-2008, Standard Form Agreement Between Owner and Architect for an Integrated Project
2. AIA Document A295-2008, General Conditions of the Contract for Integrated Project Delivery
3. AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, or the following:
4. Other documents:
(List other documents, including the Architect's scope of services document, hereby incorporated into the Agreement.)

Customizations of the foregoing documents for the Project as of the date of execution of this Agreement or as subsequently agreed.

This Agreement entered into as of the day and year first written above.

OWNER (Signature)

Dr. Rodney Thompson Superintendent
(Printed name and title)

ARCHITECT (Signature)

Ron Smith AIA Principal-in-Charge
(Printed name and title)

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Additions and Deletions Report for AIA® Document B195™ – 2008

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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PAGE 1

AGREEMENT made as of the tenth day of December in the year two thousand thirteen 2013

...

The School District of Berkeley County, South Carolina 229 East Main Street Moncks Corner, South Carolina 29461
Phone: (843) 899-8600 Fax: (843) 899-8791

...

McMillan Pazdan Smith Architecture 12-A Vanderhorst Street Charleston, South Carolina 29403 Ron G. Smith,
Managing Principal Charleston
Phone: (843) 566-0771

...

New Elementary School at Foxbank Plantation
Berkeley County School District
Berkeley County, South Carolina

...

Contract Construction, Inc. P.O. Box 269 Ballentine, South Carolina 29002-0269 Greg Hughes, President
Phone: (803) 781-7058

PAGE 2

§ 1.1 The Architect shall provide the professional services set forth in AIA Document A295™–2008 General Conditions of the Contract for Integrated Project Delivery, which is incorporated herein by reference, except as specifically indicated to be the responsibility of others. Such services shall include usual and customary structural, mechanical, and electrical engineering services with compliance to SCDOE OSF Guidelines and BCSD Facility Design Guidelines and as delineated in the Architect's proposal submitted in response to RFQ#396-(13-14)

...

One Million (\$1,000,000.00) per occurrence/ One Million (\$1,000,000.00) aggregate

...

Statutory Minimum

...

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Statutory Minimum

...

Architect: One Million (\$1,000,000.00) per claim/ One Million (\$1,000,000.00) aggregate
Consultants: One Million (\$1,000,000.00) per claim/ One Million (\$1,000,000.00) aggregate

PAGE 3

- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations; except OSF/ Fire Marshal interpretations.
- ...
- .6 Preparation of design and documentation for changes the Owner requests after acceptance of the Guaranteed Maximum Price; Price when construction costs exceed \$25,000.00.
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing; [Number not Used]
- .8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, proceeding where a civil action has been filed in the judicial system, except where the Architect is party thereto;
- .9 Evaluation of the qualifications of bidders or persons providing proposals; [Number not Used]
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .11 Assistance to the Initial Decision Maker, if other than the Architect; construction.
- ...
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service; [Number not Used]
- .4 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or [Number not Used]
- ...
- .1 Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor
- .2 (—) An average of bi-weekly visits to the site by the Architect over the duration of the Project during construction
- .3 Two (2) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the GMP Documents
- .4 Two (2) inspections for any portion of the Work to determine final completion

§ 1.5.5 If the services covered by this Agreement have not been completed within forty-eight (48) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services equitably in light of demonstrated additional performance costs incurred by the Architect.

PAGE 4

§ 3.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement for the Owner's statutory duties and purposes. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and

exclusively for use in performing services for the Project. ~~If the Architect rightfully terminates this Agreement for cause as provided in Section 6.4, the license granted in this Section 3.3 shall terminate.~~ The license also includes the Owner's right to provide the Instruments of Service to other Architects retained by the Owner for reference and consistency purposes in preparing future Instruments of Service for the Owner's needs at the Project or other Owner projects; the use of design concepts from the Instruments of Service for future projects is not in derogation of the license provided the resulting design is sealed and issued solely under the professional license(s) of a design professional then under contract to the Owner.

§ 3.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. ~~The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's terms of this Section 3.3.1 shall not apply to the use of the Instruments of Service under this Section 3.3.1. The terms of this Section 3.3.1 shall not apply for the Project if the Owner rightfully terminates this agreement for cause under Article 6.~~

Five (5%) percent of the GMP

The Architect shall submit a scope and costs for any additional services prior to starting such services. Once the proposal is received, the Owner will respond within seven (7) days.

§ 4.3 Compensation for Additional Services of the Architect's consultants when not included in Section 4.2, shall be the amount invoiced to the Architect plus percent (—%), or as otherwise stated below: five percent (5 %).

As part of this contract, the Architect shall include proposals from consultants for completing boundary and topographical survey, geotechnical report, environmental phase I report, SCDOT site traffic report, and other similar studies as required to fully describe the site. Upon written authorization, the Architect shall procure these services on behalf of the Owner as a Reimbursable Expense.

PAGE 5

Conceptualization Phase:	<u>Ten</u>	percent (	<u>10</u>)
Criteria Design Phase:	<u>Twenty</u>	percent (	<u>20</u>)
Detailed Design Phase:	<u>Twenty</u>	percent (	<u>20</u>)
Implementation Documents Phase:	<u>Twenty-five</u>	percent (	<u>25</u>)
Construction Phase:	<u>Twenty</u>	percent (	<u>20</u>)
Closeout Phase:	<u>Five</u>	percent (	<u>5</u>)

See attached exhibit of hourly billing rates.

Employee or Category	Rate
----------------------	------

- .1 ~~Transportation and authorized out-of-town travel and subsistence; [Number not Used]~~
- .2 ~~Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets; [Number not Used]~~
- .3 ~~Fees paid for securing approval of authorities having jurisdiction over the Project; [Number not Used]~~
- .4 ~~Printing, reproductions, plots, standard form documents; the Architect should strive to competitively bid out reproduction costs and to use electronic distribution as much as possible to control costs.~~

- .5 Postage, handling and delivery; the Architect should strive to use the least expensive service;

...

- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the ~~Owner; Owner (except materials created for community and district input meetings and Board of Education reports and presentations).~~
- .8 ~~Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants; [Number not Used]~~
- .9 ~~All taxes levied on professional services and on reimbursable expenses; [Number not Used]~~
- .10 ~~Site office expenses; and [Number not Used]~~

PAGE 6

§ 4.7.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus an administrative fee of five percent (5 %) of the expenses incurred.

...

One dollar (\$1.00).

...

§ 4.9.1 ~~An initial payment of (\$) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice. [Number not Used].~~

§ 4.9.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

...

5.00 % per annum

§ 4.9.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the ~~Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.~~ Architect.

§ 4.9.4 ~~Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times provided with each invoice.~~

...

§ 5.1 The Owner and Architect shall resolve any claim or cause of action arising out of or relating to this Agreement pursuant to the ~~mediation and arbitration provisions set forth in Sections 13.3 and 13.4 of the Project's customized form of the A295-2008.~~

§ 5.2 ~~The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 5.2. [Number not Used]~~

§ 5.3 To the extent damages are covered by property insurance, and the relevant policy permits, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the

other for damages, except such rights as they may have to the proceeds of such insurance as set forth in A295-2008. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

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§ 6.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, ~~plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect compensated.~~

§ 6.8 ~~The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 3 and Section 4.8 of this Agreement as well as the A295-2008.~~ [Number not Used]

...

§ 7.1 This Agreement shall be governed by the law of the place where the Project is located, ~~subject to the Federal Arbitration Act as applicable.~~ located.

...

§ 7.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. ~~If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution.~~ The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

...

§ 7.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information ~~if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary information.~~ The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 7.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person ~~other than as may be required by law,~~ except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

PAGE 8

1. The Architect will provide an electronic version of as-builts of the Project at the completion of construction; each drawing will be a separate PDF file and be named the same as the drawings sheet numbering scheme.
2. The Architect will provide after substantial completion, an 11th month warranty inspection with written report.
3. The Architect will provide assistance to the Owner's procurement process for evaluation of the contractors.
4. The Architect will conduct a series of District input meetings during the programming and conceptualization phases for the School Administrators/ Staff, the District Office Cabinet staff, the Facilities/ Maintenance Department, the Food Services Department, and IT Department.
5. The Architect will conduct a series of community involvement public meetings during the programming and conceptualization phases (at least two (2) public meetings during programming and one (1) public meeting during conceptualization).
6. The Architect will make presentations to the School Board about programming efforts/ design features/ public input ideas/ budget/ schedule during the "Detailed Design Phase" and prior to the completion of the construction documents.

7. The Architect will prepare and submit a two (2) page executive summary report on a monthly basis containing budget/ cost information, schedule, work progress summary, potential changes, and photographs at the 10th of each month.
8. The Architect will provide a written field report within five (5) days of each site visit during the construction phase.
9. The Architect will provide meeting notes within seven (7) days after the meeting during the design phase.

...

Customizations of the foregoing documents for the Project as of the date of execution of this Agreement or as subsequently agreed.

...

Dr. Rodney Thompson Superintendent

Ron Smith AIA Principal-in-Charge

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, _____, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 11:26:29 on 12/10/2013 under Order No. 5662467476_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B195™ – 2008, Standard Form of Agreement Between Owner and Architect for Integrated Project Delivery, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

Sheri L. Wainscott

From: brentjeffcoat@mindspring.com
Sent: Tuesday, December 15, 2015 5:31 PM
To: Keith R. Powell
Subject: FOIA

Follow Up Flag: Follow up
Flag Status: Flagged

For such as it is worth, I never undertook to represent Robbie Ferris in connection with Horry County. In fact, I have never agreed to be counsel to Robbie. He asks me questions from time to time that I answer and if he asks me for help in contacting someone, I try to oblige. I did some research on the Horry County School District website to make sure I knew what their procurement code contained. But, I never undertook to represent Robbie or his firm.

Robbie asked me if there were any way to finance construction. I had devised a plan for what I called deferred payment construction contracts about 6 years ago in an unrelated context (meaning not schools and not Robbie) and I shared that with him. But I never treated those conversations as anything other than marketing and I never gave a flat opinion to anyone on a specific transaction.

I don't think casual conversations create an attorney client relationship; however, if someone discusses something with me then I have to think about whether that communication is privileged. In this instance, I knew that Robbie was sharing the information I gave him and I never thought that he had an expectation of confidentiality.

Point is that I am not counsel to Robbie Ferris. I may do that in the future, but I am not a construction lawyer and I don't get involved in those matters.

Brent Jeffcoat

Sheri L. Wainscott

From: Brent Jeffcoat <brentjeffcoat@mindspring.com>
Sent: Tuesday, December 15, 2015 8:21 PM
To: Keith R. Powell
Subject: Horry FOIA

Follow Up Flag: Follow up
Flag Status: Flagged

Should I notify Thurmond, et al, that I am not Robbie's counsel?

Brent Jeffcoat
(803) 354-4918 Columbia office
(980) 225-1125 Charlotte office
(803) 422-6579 cell

Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Monday, November 09, 2015 8:53 PM
To: Keith R. Powell; Danielle Davis
Cc: Ara Heinz (AHeinz@horrycountyschools.net)
Subject: RE: Redaction of documents

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Keith,

Page 2 and Page 3 of the PDF (the spreadsheets showing our cost breakdown) should be considered confidential. While you are correct that much of this will appear in the schedule of values were not interested in the world knowing how much our Wayne County projects cost.

Robbie

From: Keith R. Powell [<mailto:kpowell@childs-halligan.net>]
Sent: Monday, November 09, 2015 4:41 PM
To: Robbie Ferris; Danielle Davis
Cc: Ara Heinz (AHeinz@horrycountyschools.net)
Subject: FW: Redaction of documents

Danielle –

The FOIA document production by the HCS to the media is an ongoing massive task. Is there any part of the enclosed where you claimed confidentiality but no longer want or need to do so? I think most of what you've got will turn up in the schedule of values anyway.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

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From: Ara Heinz [<mailto:AHeinz@horrycountyschools.net>]
Sent: Monday, November 09, 2015 4:25 PM
To: Keith R. Powell
Subject: [REDACTED]

**ATTORNEY-CLIENT
PRIVILEGE**

Ara Heinz | Procurement Services | ☎ P: 843/488-6930
Horry County Schools | 335 Four Mile Rd. | Conway, SC 29526
Website: Procurement.horrycountyschools.net



Sheri L. Wainscott

From: Danielle Davis <ddavis@sfla.biz>
Sent: Monday, November 09, 2015 4:54 PM
To: Keith R. Powell; Robbie Ferris; Mike Wawrzyniak
Cc: Ara Heinz (AHeinz@horrycountyschools.net)
Subject: RE: Redaction of documents

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Hi Keith,

Thank you for sending this information. We will review the attached documents and send you a response tomorrow.

Danielle

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

From: "Keith R. Powell" <kpowell@childs-halligan.net>
Date: 11/09/2015 4:42 PM (GMT-05:00)
To: Robbie Ferris <RFerris@sfla.biz>, Danielle Davis <ddavis@sfla.biz>
Cc: "Ara Heinz (AHeinz@horrycountyschools.net)" <AHeinz@horrycountyschools.net>
Subject: FW: Redaction of documents

Danielle –

The FOIA document production by the HCS to the media is an ongoing massive task. Is there any part of the enclosed where you claimed confidentiality but no longer want or need to do so? I think most of what you've got will turn up in the schedule of values anyway.

Keith R. Powell

Childs & Halligan, P.A.

Columbia, South Carolina

www.childs-halligan.com

(803) 254-4035

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From: Ara Heinz [<mailto:AHeinz@horrycountyschools.net>]

Sent: Monday, November 09, 2015 4:25 PM

To: Keith R. Powell

Subject: [REDACTED]

**ATTORNEY-CLIENT
PRIVILEGE**

Ara Heinz | Procurement Services | ☎ P: 843/488-6930

Horry County Schools | 335 Four Mile Rd. | Conway, SC 29526

Website: Procurement.horrycountyschools.net



Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Monday, November 09, 2015 8:56 PM
To: Keith R. Powell; Danielle Davis
Cc: Ara Heinz (AHeinz@horrycountyschools.net)
Subject: RE: Redaction of documents

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Keith,

To clarify, the notes on page two and page three can be shared publicly, it's the numbers on pages 2 and 3 that we would rather not share. Page 1 and pages 3 -12 can be shared publicly.

Robbie

From: Keith R. Powell [<mailto:kpowell@childs-halligan.net>]
Sent: Monday, November 09, 2015 4:41 PM
To: Robbie Ferris; Danielle Davis
Cc: Ara Heinz (AHeinz@horrycountyschools.net)
Subject: FW: Redaction of documents

Danielle –

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From: Ara Heinz [<mailto:AHeinz@horrycountyschools.net>]
Sent: Monday, November 09, 2015 4:25 PM
To: Keith R. Powell
Subject: [REDACTED]

**ATTORNEY-CLIENT
PRIVILEGE**

Ara Heinz | Procurement Services | 電話: 843/488-6930
Horry County Schools | 335 Four Mile Rd. | Conway, SC 29526
Website: Procurement.horrycountyschools.net



Sheri L. Wainscott

From: Keith R. Powell
Sent: Monday, November 09, 2015 4:41 PM
To: Robbie Ferris (RFerris@sfla.biz); Danielle Davis (ddavis@sfla.biz)
Cc: Ara Heinz (AHeinz@horrycountyschools.net)
Subject: FW: Redaction of documents
Attachments: FFEP Addtl Price Proposal docs.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Danielle –

The FOIA document production by the HCS to the media is an ongoing massive task. Is there any part of the enclosed where you claimed confidentiality but no longer want or need to do so? I think most of what you've got will turn up in the schedule of values anyway.

Keith R. Powell
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From: Ara Heinz [mailto:AHeinz@horrycountyschools.net]
Sent: Monday, November 09, 2015 4:25 PM
To: Keith R. Powell
Subject: [REDACTED]

**ATTORNEY-CLIENT
PRIVILEGE**

Ara Heinz | Procurement Services | P: 843/488-6930
Horry County Schools | 335 Four Mile Rd. | Conway, SC 29526
Website: Procurement.horrycountyschools.net



ALTERNATIVE PAYMENT OPTIONS

According to the RFP, the projects are not fully funded; therefore, First Floor is prepared to offer attractive payment options if Horry County Schools deems that advantageous. It is our belief that our payment options will not count toward Horry County Schools' 8% limitation thereby creating the possibility for the district to borrow for other projects should the need arise in the future. The terms of the payment options are subject to approval by HCS, its Financial Advisor, the bonding company and lender providing the funding to Firstfloor. The bonding company does not guarantee that HCS, the design-builder or subsidiaries of the design-builder, will be approved for the payment options listed below.

PAYMENT OPTION 1:

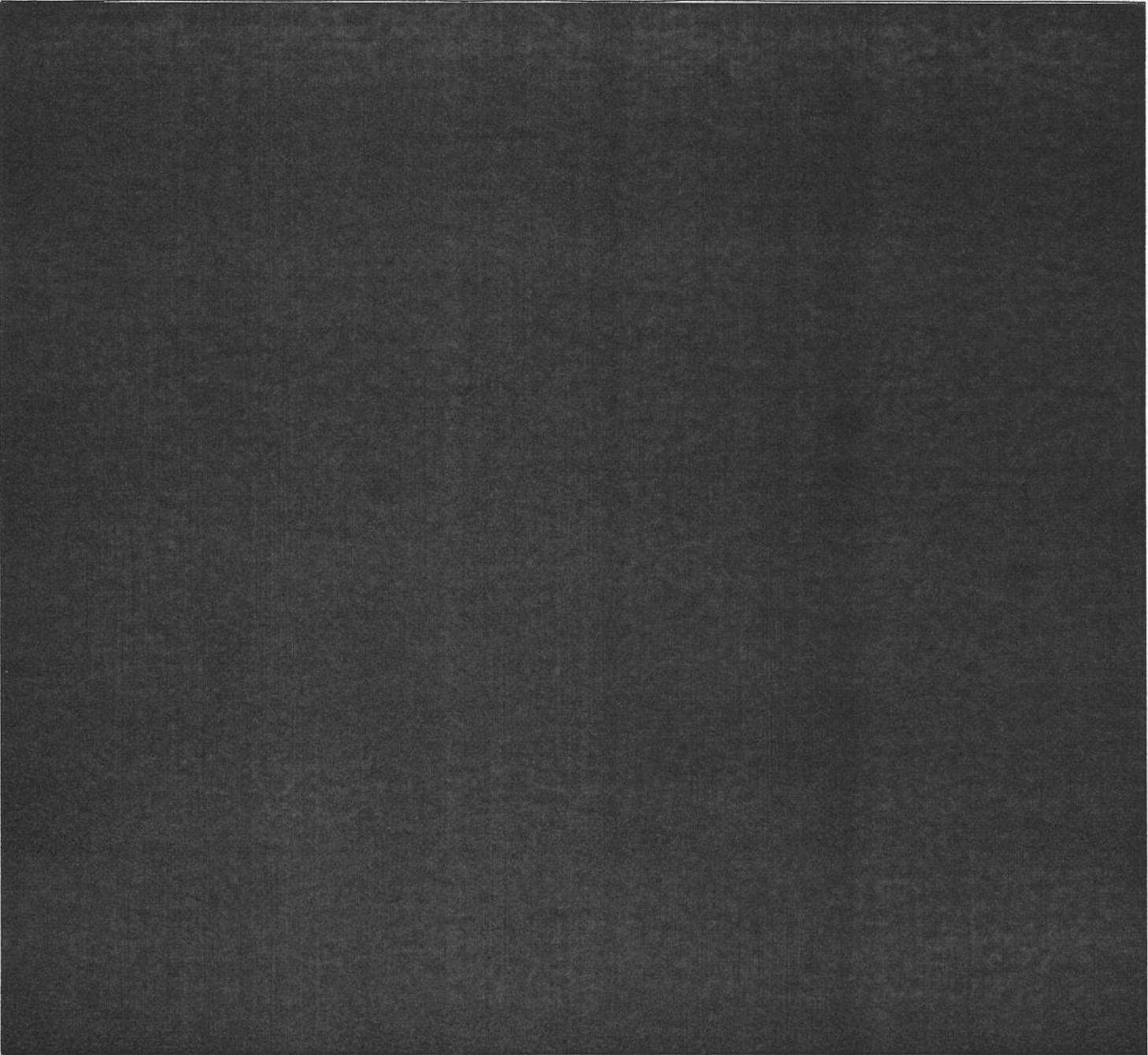
Design build-contract with the ability to pay Firstfloor over a 5-7 year period (payout period). Features of this option are as follows:

- The financing payments under the contract will likely not be secured by a general obligation pledge and will likely not count as part of the HCS 8% debt limit and would possibly free up HCS borrowing capacity allowing HCS to borrow money for other projects. The goal is to make all these payments from existing sales tax revenues, if sufficient. The payments under the contract are for construction and related items and, based on a review of the referendum question, it appears that sales tax revenues can be used to make the contract payments.
- The design builder would provide maintenance and optimization of the HVAC system for the term of the payout in lieu of the specified three years.
- Annual payments would be subject to lender approval and establishing interest rates.
- Several lenders have expressed initial interest in the program but will need to complete due diligence and fully understand the strength of the revenue stream(s) in order to proceed. Initial indications of borrowing rates range from 1.75% to the mid 4% level depending on the strength of the revenue and contract terms. No assurance can be given until the lender(s) can complete due diligence.
- The terms of the final contract will include design-build financial costs. These additional costs include but are not limited to finance and development fees, underwriting fees, and legal fees. We estimate the total additional costs to be \$6,887,262 for a total cost of \$227,837,031 for the full program (5-schools). NOTE: This number is for the full program cost only and does not include any interest cost during the pay-off of the construction contract. The amount of the interest will be determined by the actual interest rate achieved by Firstfloor and the final payment structure selected by HCS and its Financial Advisor.
- We would need the assistance of HCS's Financial Advisor to complete the structuring process and due diligence.

PAYMENT OPTION 2:

Firstfloor proposes to lease the building for a term up to 30 years to HCS. Features of this option are as follows:

- The goal of this lease structure would be to eliminate or reduce dependence on the 8% debt limit thereby freeing up HCS borrowing capacity for other projects.
- Annual payments would be subject to contract terms to be negotiated between the design-builder and its lender.
- Additional development, financing and underwriting fees would apply.
- We would need the assistance of HCS's Financial Advisor to complete the structuring process and due diligence.



The information on this sheet is considered a "confidential trade secret". We are providing this information to help HCS understand why the project is over budget. If any part of this request is deemed inappropriate HCS may disregard this request for treatment of this information as confidential. In addition there may be certain parts of the information on this sheet that can be shared publically with approval of Firstfloor.

Even with 1 year inflation
the proposed Horry
County projects cost
about the same as the
Wayne County projects

Owner allowances for
Horry County School
projects are higher than
the Wayne County
School projects

- o To explain why the HCS projects are over budget we have compared the HCS projects to the two recent energy positive school projects in Wayne County, NC. As you can see the building costs for the HCS projects are higher than the Wayne projects with the premium being roughly \$8-\$20.00 per sf, depending on which Wayne school you are comparing to. The bulk of the difference is in the interior glass, exterior glass, sunscreens, landscaping, fireproofing, acoustical panels to comply with ANSI standard, and food service equipment to comply with HCS standards. The biggest single difference is in the Owner contingencies and the cost of insurance (approximately \$15.00 per SF).
- o The reason the projects are over budget is that the HCS project budgets did not appear to include inflation. To the best of our knowledge the budget for the HCS projects was set in early 2014. When firstfloor submitted its proposal to HCS, about a year ago, we indicated that HCS needed to increase its budget by approximately \$13,000,000.00. We have seen 20% inflation in school construction costs just in the last 12 months. We offer the following analysis:
- o Recommended budget increase from a year ago to account for inflation from the time the original budget was set-\$13,000,000.00
- o Inflation in the last year-\$30,000,000.00
- o Owner allowance premium-\$11,060,500.00
- o Insurance premium-\$1,106,250.00
- o Soil remediation/demolition premium-\$813,960
- o Total premium for HCS projects(rough order of magnitude) -\$55,980,710
- o Our combination price for four schools is a reduction in cost of 6.2% which is \$19.40 per SF
- o Our proposal has been carefully thought through and we believe we have priced a building that includes all of the features of a world class educational facility that complies with the RFP.
- o We are confident that our building will perform to the highest level.
- o Our opinion is that the projects we propose for HCS are very efficient and a great value given market conditions.

The Notes in the text box are not confidential and can be shared publically.

The information on this sheet is considered a "confidential trade secret". We are providing this information to help HCS understand why the project is over budget. The Notes in the text box are not confidential and can be shared publically. If any part of this request is deemed inappropriate HCS may disregard this request for treatment of this information as confidential. In addition there may be certain parts of the information on this sheet that can be shared publically with approval of Firstfloor.

PiperJaffray.

Bank of America Plaza, 101 South Tryon Street, Suite 2450, NC 28280

Tel: 704 342-7815

Fax: 704 919-5028

Piper Jaffray & Co. Since 1895. Member SIPC and NYSE.

August 25, 2015

Mr. Robbie Ferris
CEO/President
SfL+a Architects
333 Fayetteville Street
Suite 225
Raleigh, NC 27601

Re: Proposed Horry County School District Construction Program

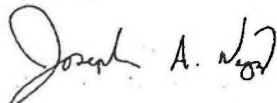
Dear Robbie:

As you are aware, we have explored interest from potential lenders in providing construction/permanent financing directly to Firstfloor/SfL+a to construct school facilities in SC. Per your request as part of an RFP for construction services issued by Horry County School District, we specifically looked at the Horry School District's construction program and your identified approximately \$200 million in K-12 projects. Based on discussions with legal counsel regarding the structure of the transaction, we understand that the District will use sales tax revenues to make any payments to Firstfloor/SfL+a (the "Project").

Based on our discussions with multiple potential lenders, several have expressed interest in funding approximately \$200 million in projects for Horry School District. They are aware of the proposed structure where the facilities will not be pledged to the proposed construction contract. While they have completed their initial due diligence, their interest is conditional upon further due diligence and formal corporate approval and review of the construction contract and other relevant documents in addition to a complete review of the sales tax revenue to be used to pay the construction contract.

This is only a statement of preliminary interest in the Project and does not constitute a commitment by any of the lenders.

Sincerely,



Joseph A. Niggel
Managing Director

BID BOND



PRINCIPAL (BIDDER): <i>(Name and Business Address)</i> Firstfloor Energy Positive LLC 333 Fayetteville St. #225 Raleigh, NC 27601 Contact Name: Robert W. Ferris Phone: 919-610-2251	TYPE OF ORGANIZATION: <input type="checkbox"/> Individual <input type="checkbox"/> Partnership <input type="checkbox"/> Joint Venture <input checked="" type="checkbox"/> Corporation LLC Principal organized under the laws of the State of: NC
OWNER (THE DISTRICT): <i>(Name and Business Address)</i> Horry County Schools 334 Four Mile Road, P.O. Box 260005 Conway, South Carolina 29528-6005 Contact Name: Ara Heinz Phone: 843-488-6930	BID IDENTIFICATION: Project / Bid Number: 1415-91 Project Name: Carolina Forest Middle School, Myrtle Beach Middle School St. James Intermediate School
SURETY: <i>(Name and Business Address)</i> Travelers Casualty and Surety Company of America One Tower Square Hartford, CT 06183 Contact Name: Kenneth J. Peoples Phone: 919-281-4510	Surety's Best Key Rating: A+ Surety's Financial Strength Rating: XIV Surety organized under the laws of the State of: CT

PENAL SUM OF BOND IS FIVE PERCENT (5%) OF TOTAL BASE BID PLUS ALL ALTERNATES NOT TO EXCEED: \$ 5%

OBLIGATION:

We, the Principal and Surety are firmly bound to Horry County Schools (hereinafter called the District) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally.

CONDITIONS:

Neither Principal nor Surety shall be bound hereunder unless Obligor prior to the execution of the final contract furnishes evidence satisfactory to Principal and Surety that financing has been obtained to cover the entire cost of the Project

THEREFORE:

The above obligation is void if the Principal, upon acceptance by the District of the bid identified above within forty-five (45) days from the bid opening date and time as amended by any addendum to the bid, is found by the District to be a responsive and responsible Bidder, and who a) executes the *Contract Agreement*, b) provides to the District a fully executed *Performance Bond* and *Payment Bond*, c) has its insurance provider submit a bona-fide *Certificate of Insurance* and, d) provides all other documents required by the terms of the bid and by the date stated in the *Notice of Intent to Award* or, in the event of failure to execute one or more of the contractual documents or in the event of refusal of the Principal to comply with other such requirements of the *Bid Instructions*, pays the District for any cost of procuring the work which exceeds the amount of the Principal's bid not to exceed the penal sum so stated.

Such Surety executing this instrument agrees that its obligation is not impaired by any extension of the time for acceptance of the bid that the Principal may grant to the District. Notice to the Surety of any extension of time is waived; however, waiver of the notice applies only to extensions aggregating not more than sixty (60) calendar days in addition to the forty-five (45) calendar days originally allowed for acceptance of the bid.

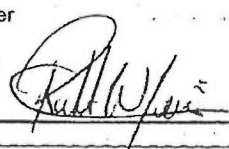
WITNESS:

The Principal and Surety executed this bid bond and affixed their seals on this date of: September 3, 2015

PRINCIPAL'S SIGNATORY

NAME & TITLE: Robert W. Ferris, Manager

FIRSTFLOOR ENERGY POSITIVE LLC

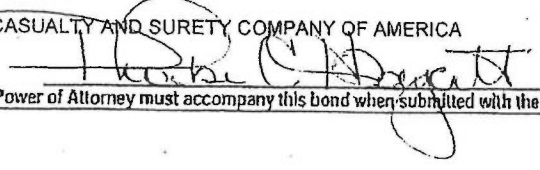
SIGNATURE: 



SURETY SIGNATORY

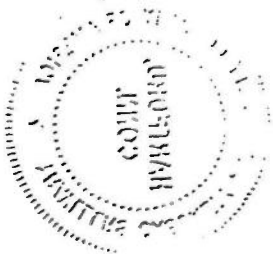
NAME & TITLE: Phoebe C. Honeycutt, Attorney-in-Fact

TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA

SIGNATURE: 

A fully executed Power of Attorney must accompany this bond when submitted with the Official Bid Form.

Corporate Seal





POWER OF ATTORNEY

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

Attorney-In Fact No. 229646

Certificate No. 006212165

KNOW ALL MEN BY THESE PRESENTS: That Farmington Casualty Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company are corporations duly organized under the laws of the State of Connecticut, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc., is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

Angela B. Britt, Richard V. Haar Jr., Phoebe C. Honeycutt, Kenneth J. Peeples, Heather Burroughs, Neil B. Biller, Bobbi D. Pendleton, Christopher A. Lydick, Julia C. McElligott, and Adrienne Pettigrew

of the City of Durham, State of North Carolina, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 8th day of July, 2015.

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company



State of Connecticut
City of Hartford ss.

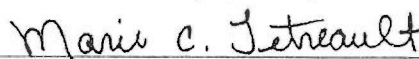
By: 

Robert L. Rancy, Senior Vice President

On this the 8th day of July, 2015, before me personally appeared Robert L. Rancy, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.
My Commission expires the 30th day of June, 2016.




Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kevin E. Hughes, the undersigned, Assistant Secretary, of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 3 day of September, 2015


Kevin E. Hughes, Assistant Secretary



To verify the authenticity of this Power of Attorney, call 1-800-421-3880 or contact us at www.travelersbond.com. Please refer to the Attorney-in-Fact number, the above-named individuals and the details of the bond to which the power is attached.

BID BOND



PRINCIPAL (BIDDER): <i>(Name and Business Address)</i> Firstfloor Energy Positive LLC 333 Fayetteville St. #225 Raleigh, NC 27601 Contact Name: Robert W. Ferris Phone: 919-610-2251	TYPE OF ORGANIZATION: <input type="checkbox"/> Individual <input type="checkbox"/> Partnership <input type="checkbox"/> Joint Venture <input checked="" type="checkbox"/> Corporation LLC Principal organized under the laws of the State of: NC
OWNER (THE DISTRICT): <i>(Name and Business Address)</i> Horry County Schools 334 Four Mile Road, P.O. Box 280005 Conway, South Carolina 29528-6005 Contact Name: Ara Heinz Phone: 843-488-6930	BID IDENTIFICATION: Project / Bid Number: 1415-91 Project Name: Carolina Forest Middle School, Myrtle Beach Middle School St. James Intermediate School, Socaslee Middle School
SURETY: <i>(Name and Business Address)</i> Travelers Casualty and Surety Company of America One Tower Square Hartford, CT 06183 Contact Name: Kenneth J. Peeples Phone: 919-281-4510	Surety's Best Key Rating: A+ Surety's Financial Strength Rating: XIV Surety organized under the laws of the State of: CT

PENAL SUM OF BOND IS FIVE PERCENT (5%) OF TOTAL BASE BID PLUS ALL ALTERNATES NOT TO EXCEED:

\$ 5%

OBLIGATION:

We, the Principal and Surety are firmly bound to Horry County Schools (hereinafter called the District) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally.

CONDITIONS:

Neither Principal nor Surety shall be bound hereunder unless Obligor prior to the execution of the final contract furnishes evidence satisfactory to Principal and Surety that financing has been obtained to cover the entire cost of the Project

THEREFORE:

The above obligation is void if the Principal, upon acceptance by the District of the bid identified above within forty-five (45) days from the bid opening date and time as amended by any addendum to the bid, is found by the District to be a responsive and responsible Bidder, and who a) executes the *Contract Agreement*, b) provides to the District a fully executed *Performance Bond* and *Payment Bond*, c) has its insurance provider submit a bona-fide *Certificate of Insurance* and, d) provides all other documents required by the terms of the bid and by the date stated in the *Notice of Intent to Award* or, in the event of failure to execute one or more of the contractual documents or in the event of refusal of the Principal to comply with other such requirements of the *Bid Instructions*, pays the District for any cost of procuring the work which exceeds the amount of the Principal's bid not to exceed the penal sum so stated.

Such Surety executing this instrument agrees that its obligation is not impaired by any extension of the time for acceptance of the bid that the Principal may grant to the District. Notice to the Surety of any extension of time is waived; however, waiver of the notice applies only to extensions aggregating not more than sixty (60) calendar days in addition to the forty-five (45) calendar days originally allowed for acceptance of the bid.

WITNESS:

The Principal and Surety executed this bid bond and affixed their seals on this date of: September 3, 2015

PRINCIPAL'S SIGNATORY

NAME & TITLE: Robert W. Ferris, Manager

FIRSTFLOOR ENERGY POSITIVE LLC

SIGNATURE:



SURETY SIGNATORY

NAME & TITLE: Phoebe C. Honeycutt, Attorney-in-Fact

TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA

SIGNATURE:

A fully executed Power of Attorney must accompany this bond when submitted with the *Official Bid Form*.

Corporate Seal



TRAVELERS 

POWER OF ATTORNEY

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

Certificate No. 006212159

Attorney-in Fact No. 229646

NOW ALL MEN BY THESE PRESENTS: That Farmington Casualty Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company are corporations duly organized under the laws of the State of Connecticut, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc., is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

Angela B. Britt, Richard V. Haar Jr., Phoebe C. Honeycutt, Kenneth J. Peeples, Heather Burroughs, Neil B. Biller, Bobbi D. Pendleton, Christopher A. Lydick, Julia C. McElligott, and Adrienne Pettigrew

of the City of Durham, State of North Carolina, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

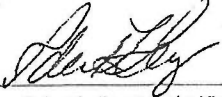
IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 8th day of July, 2015.

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company



State of Connecticut
City of Hartford ss.

By: 
Robert L. Raney, Senior Vice President

On this the 8th day of July, 2015, before me personally appeared Robert L. Raney, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.
My Commission expires the 30th day of June, 2016.




Marie C. Tetreault, Notary Public

WARNING: THIS POWER OF ATTORNEY IS INVALID WITHOUT THE RED BORDER

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

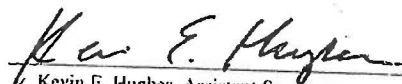
FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kevin E. Hughes, the undersigned, Assistant Secretary, of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 3 day of September, 2015


Kevin E. Hughes, Assistant Secretary



To verify the authenticity of this Power of Attorney, call 1-800-421-3880 or contact us at www.travelersbond.com. Please refer to the Attorney-In-Fact number, the above-named individuals and the details of the bond to which the power is attached.

WARNING: THIS POWER OF ATTORNEY IS INVALID WITHOUT THE RED BORDER

PAPR - 002263

Sheri L. Wainscott

From: Keith R. Powell
Sent: Monday, November 23, 2015 12:38 PM
To: Robbie Ferris
Subject: Fwd: HCS - Revised Invoices

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

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Begin forwarded message:

From: John Gardner <JGardner@horrycountyschools.net>
Date: November 23, 2015 at 12:27:36 PM EST
To: "Keith R. Powell" <kpowell@childs-halligan.net>, Mark Wolfe <MWolfe002@horrycountyschools.net>
Subject: RE: HCS - Revised Invoices

Keith,

Why would he not use the standard AIA application for payment?

Thanks!
John

From: Keith R. Powell [<mailto:kpowell@childs-halligan.net>]
Sent: Monday, November 23, 2015 12:25 PM
To: John Gardner <JGardner@horrycountyschools.net>; Mark Wolfe <MWolfe002@horrycountyschools.net>
Subject: FW: HCS - Revised Invoices

While we're there today can you give Robbie the info he will need to submit invoices?

Keith R. Powell
Childs & Halligan, P.A.

Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

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From: Robbie Ferris [mailto:RFerris@sfla.biz]
Sent: Sunday, November 22, 2015 6:23 PM
To: Keith R. Powell
Subject: FW: HCS - Revised Invoices

Keith,

These are the invoices I plan on submitting. Since the school folks are not talking to us until we get a contract can you tell me what we need to do to officially submit these? If they do wire transfers that is always best for us so we can pay people faster. We have included wire transfer instruction in case they are able to do wire transfers.

Robbie

From: Rick Green
Sent: Sunday, November 22, 2015 6:14 PM
To: Robbie Ferris
Subject: HCS - Revised Invoices

Here you go!!! I've also attached the wire instructions to move funds into the Firstfloor Energy Positive (HCS Team) account at BB&T.

Richard A. Green
Firstfloor Inc.
4400 Silas Creek Parkway, Ste. 200
Winston Salem, NC 27104
Office: (336) 794-2325
Fax: (336) 768-7666
rgreen@firstfloor.biz

Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Monday, November 23, 2015 1:52 PM
To: Keith R. Powell
Subject: Re: HCS - Revised Invoices

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Keith, we could use the standard application for payment however the contract says that for services rendered before the amended meant is signed we should submit an invoice. I think the process that is contemplated is that we submit an invoice for the first application. We then have the schedule of values approved. And then all other applications for payment our standard AIA applications. We can discuss this later today

Sent from my iPhone

On Nov 23, 2015, at 12:37 PM, Keith R. Powell <kpowell@childs-halligan.net> wrote:

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

NOTICE: This e-mail may contain information that is personal and confidential, non-disclosable and protected by attorney-client privilege. If you have received this e-mail in error, this does not constitute permission to examine, copy or distribute the accompanying material. If you receive this message in error, please notify us by telephone as listed above immediately.

Begin forwarded message:

REDACTED

REDACTED

From: Robbie Ferris [<mailto:RFerris@sfla.biz>]
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Subject: FW: HCS - Revised Invoices

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Richard A. Green

Firstfloor Inc.
4400 Silas Creek Parkway, Ste. 200
Winston Salem, NC 27104
Office: (336) 794-2325
Fax: (336) 768-7666
rgreen@firstfloor.biz

Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Friday, November 13, 2015 3:10 PM
To: Keith R. Powell
Subject: HCS contracts

Follow Up Flag: Follow up
Flag Status: Completed

Keith,

Would it make sense if you set up a meeting for next Thursday where we go to Horry and I and the owner sign contracts?

I am told, by subcontractors, that the normal procedure in Horry County is that if applications for payment are received by the 23rd you get paid by the 10th. You might want to confirm that the 23rd is there magic date for applications for payment.

Here is the info for the remaining blanks:

A2.2- Keith these are the days for each project per the schedule in our proposal:

Carolina Forest MS
Myrtle Beach MS
St James IS
Socastee ES
Socastee MS

Article A.4:

Carolina Forest Middle School:
Superintendent: Mark Branch
Project Manager: Charlie Rollins
Assistant Superintendent: Gary Pipkin

Myrtle Beach Middle School:
Superintendent: Ed Bruce
Project Manager: Rusty Woolard
Assistant Superintendent: Ray Carrino

St. James Intermediate:
Superintendent: Randall Jernigan
Project Manager: Steve Bond
Assistant Superintendent: Rodney Nichols

Socastee ES:
Superintendent: Dale McCoy
Project Manager: Mike Dickman
Assistant Superintendent: David Isham

Socastee Middle School:
Superintendent: Phil Asslynn

Project Manager: Mike Dickman
Assistant Superintendent: Bob Green

Article A.4.2

SfL+a Architects: Architect, Raleigh NC

Metcon/TA Loving joint venture: General Contractor, Pembroke NC

Article 3.1.5.1

Keith

In addition to the allowances in the RFO, listed below, we have a landscaping allowance of \$200,000 for each school except that we have 250,000 for myrtle beach middle school. Our overhead and profit is outside this number. This is the amount that we can issue to subcontractors for the actual work. If we don't spend all of this HCS will get it back. You can list this in the allowance section or the contingency section, I don't think it matters...

	CF	MB	SJ	SM	SE	total not including
the landscape allowance						
1030.000 - Owner Furniture Allowance	\$ 1,500,000	\$ 1,500,000	\$ 1,500,000	\$ 1,250,000	\$ 1,000,000	
1031.000 - Owner Hardware Allowance	\$ 350,000	\$ 350,000	\$ 350,000	\$ 350,000	\$ 250,000	
1032.000 - Owner Controls Allowance	\$ 650,000	\$ 650,000	\$ 650,000	\$ 650,000	\$ 500,000	
1033.000 - Owner Fire Alarm Allowance	\$ 750,000	\$ 750,000	\$ 750,000	\$ 750,000	\$ 600,000	
1034.000 - Owner Playground Equip. All			\$ 150,000		\$ 350,000	
1035.000 - Owner Special Inspections All	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000	
1036.000 - Owner Commissioning Allo	\$ 125,000	\$ 125,000	\$ 125,000	\$ 125,000	\$ 100,000	
1037.000 - Owner Technology Allowance	\$ 1,865,000	\$ 1,865,000	\$ 1,865,000	\$ 1,645,000	\$ 1,275,000	
	\$ 5,390,000	\$ 5,390,000	\$ 5,540,000	\$ 4,920,000	\$ 4,225,000	\$ 25,465,000



Robert W. Ferris, AIA, REFP, LEED AP
CEO/President
SfL+a Architects
333 Fayetteville Street, Suite 225
Raleigh, NC 27601
Cell: 919.610.2251
Fax: 919.573.6355
rferris@sfla.biz
www.sfla.biz

"I'd put my money on solar energy... I hope we don't have to wait till oil and coal run out before we tackle that." Thomas Edison, in conversation with Henry Ford and Harvey Firestone, March 1931.

Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Friday, November 13, 2015 4:57 PM
To: Keith R. Powell
Subject: FW: Horry County School Schedule VS Proposal
Attachments: HCS - 4 School Combo - Schedule 09.01.15.pdf; HCS - 5 School Combo - 11.11.15 REV# 1.pdf

Follow Up Flag: Follow up
Flag Status: Completed

Keith,

I have included the email chain with our project manager so in case I don't fully describe the dates were proposing you will have the benefit of the schedule in his words.

We propose reducing the total duration from 575 days to 566 days in exchange for a bit of grace in how we get there. In our individual schedules, in our proposal, we made a mistake. We scheduled pilings on the wrong school so we corrected that mistake here. We propose you use the "revised" dates below for the contract. As far as Socastee MS goes my ideas are as follows:

Option 1: 547 days from a notice to proceed if pilings are not needed and 566 days if pilings are needed.

Option 2: A schedule will be determined once a site is selected but it is expected that the schedule will approximate the schedule for Socastee Elementary School

Robbie

From: Ryan Parker [mailto:rparker@metconus.com]
Sent: Wednesday, November 11, 2015 7:13 PM
To: Robbie Ferris
Cc: Aaron Thomas; Sam Isham; David Philyaw (dphilyaw@taloving.com); Mike Mitchell (mmitchell@taloving.com); mrichter@taloving.com; rlangston@taloving.com
Subject: RE: Horry County School Schedule VS Proposal

Robbie,

We need to discuss this tomorrow in depth so that everyone is on the same page before you submit to anyone with Horry County or their council.

- Notes
 - St. James and Carolina Forest had the pile activities switched which accounts for the difference in their duration
 - The proposal asked for a schedule for the 4 school combo. An assumption was made that land would be bought and mass grading drawings could be prepared close to or before the 10/5 start date. That didn't happen so the elementary school took the place of the middle school.
- Myrtle Beach Middle School
 - Original 10/5 thru 4/3 - 546
 - Revised 11/19 thru 5/19 - 547
- St. James Intermediate School
 - Original 10/5 thru 3/10 - 522
 - Revised 11/19 thru 6/2 - 561
- Carolina Forest Middle School

- Original 10/5 thru 4/25 - 568
 - Revised 11/19 thru 5/5 - 533
- Socastee Elementary
 - Original 10/5 thru 5/2 - 575
 - Revised 11/19 thru 6/7 - 566
- Socastee Middle School
 - No land at time of original subcontract
 - Original 4 School combo schedule didn't include elementary.

With Regards

Ryan Parker | Senior Project Manager
Metcon, Inc. | 763 Comtech Drive | PO Box 1149 | Pembroke, NC 28372
 office 910.521.8013 | mobile 910.374.2766 | email:rparker@metconus.com
[website](#) | [linkedin](#) | [twitter](#) | [instagram](#)



From: Robbie Ferris [<mailto:RFerris@sfla.biz>]
Sent: Wednesday, November 11, 2015 4:24 PM
To: Ryan Parker
Cc: Aaron Thomas; Sam Isham; David Philyaw (dphilyaw@taloving.com); Mike Mitchell (mmitchell@taloving.com); mrichter@taloving.com; rlangston@taloving.com
Subject: RE: Horry County School Schedule VS Proposal

- Ryan, We need the days for each individual project since we have 5 contracts. This would be the days "From the Schedule submitted with the proposal"

From: Ryan Parker [<mailto:rparker@metconus.com>]
Sent: Wednesday, November 11, 2015 2:03 PM
To: Robbie Ferris
Cc: Aaron Thomas; Sam Isham; David Philyaw (dphilyaw@taloving.com); Mike Mitchell (mmitchell@taloving.com); mrichter@taloving.com; rlangston@taloving.com
Subject: Horry County School Schedule VS Proposal

Robbie,

In response to your question via text. *"The contract states the number of calendar days from a notice to proceed as opposed to a stipulated day. Ryan please tell me the number of calendar days in our proposal that was from the date we had shown them signing the grading application until we had shown the project being complete."*

- From the Schedule submitted with the proposal
 - Civil Mas Grading Drawings in for review October 5th 2015
 - Final Completion of all 4 projects 5/2/17
 - Total Calendar Days – 575
- From the Updated Schedule – (conference call at 3:00 PM with Civil Engineer and Southern Asphalt)

- Civil Mass Grading Drawings in for Review – 11/19/2015
- Final Completion for all 4 projects – 6/7/2015
 - This doesn't include Socastee Middle which we don't have a site for. It is handled differently based on assumptions of when we will be given the site.
- Total Calendar Days – 566 Days

With Regards

Ryan Parker | Senior Project Manager

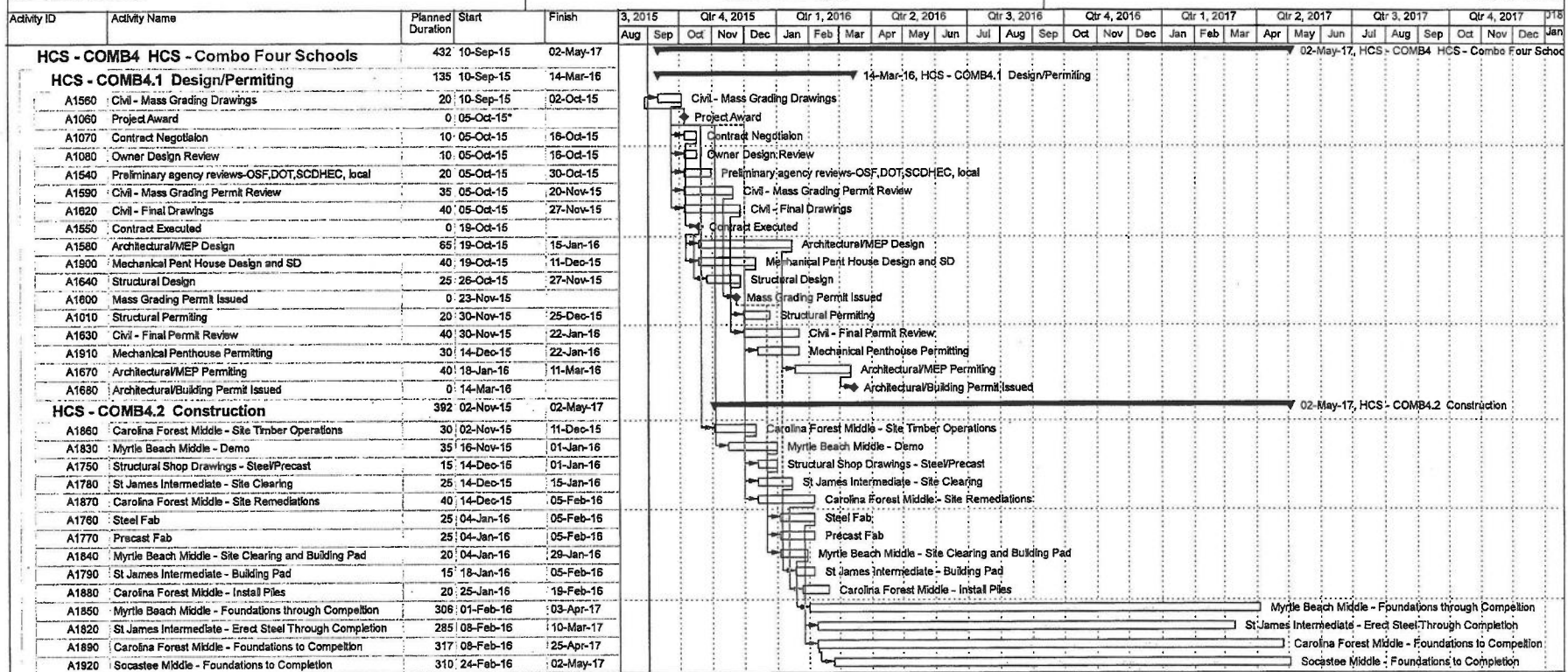
Metcon, Inc. | 763 Comtech Drive | PO Box 1149 | Pembroke, NC 28372

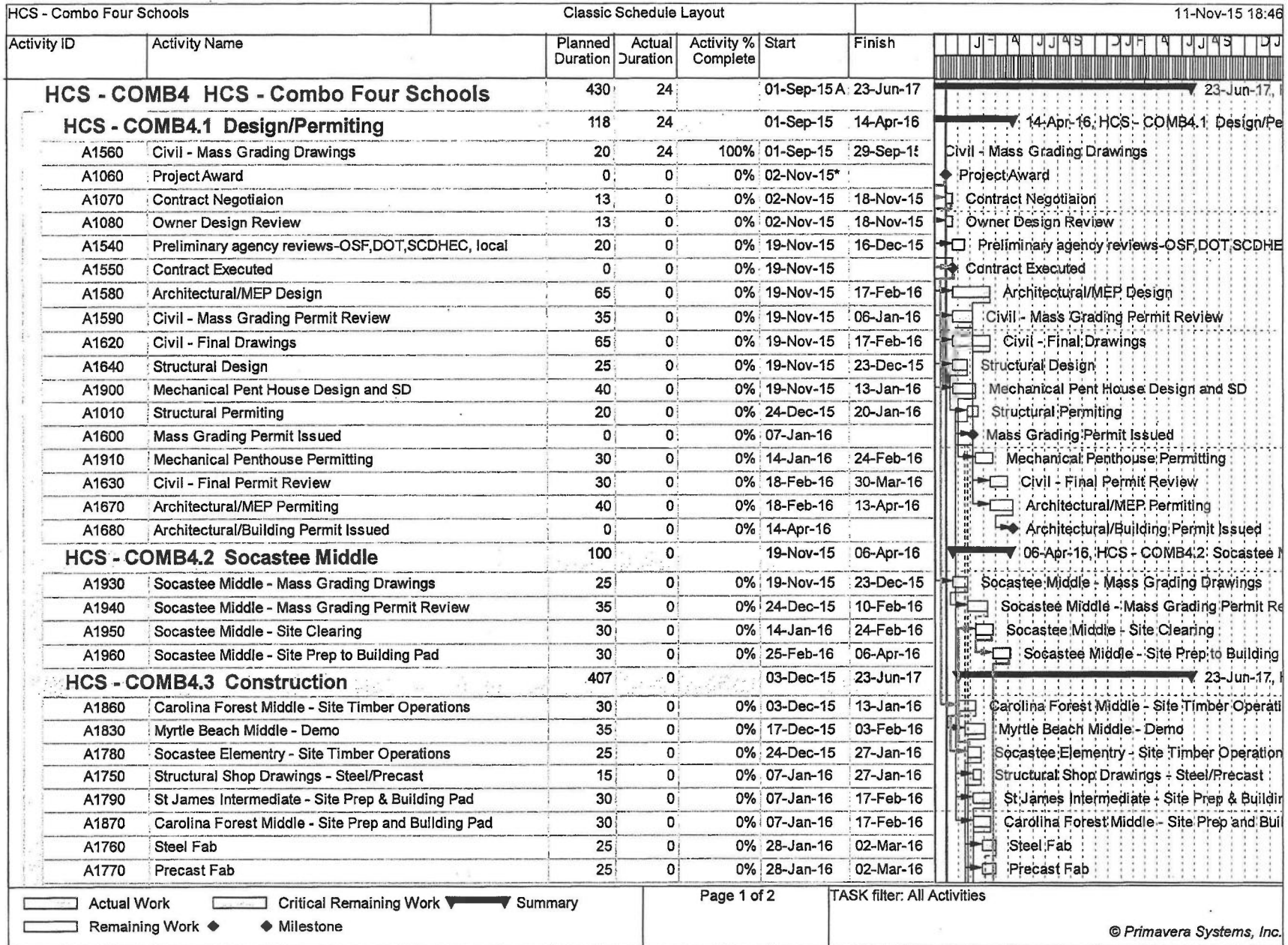
office 910.521.8013 | mobile 910.374.2766 | email:rparker@metconus.com

[website](#) | [linkedin](#) | [twitter](#) | [instagram](#)

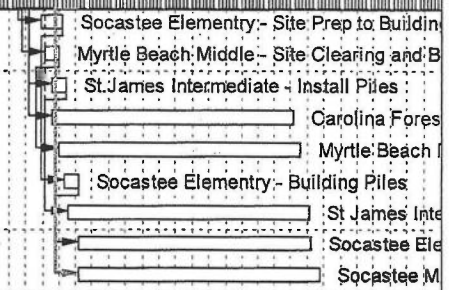


PEMBROKE | RALEIGH | CHARLOTTE | COLUMBIA





Activity ID	Activity Name	Planned Duration	Actual Duration	Activity % Complete	Start	Finish		J	A	J	J	A	S	J	J	F	A	J	J	A	S	D	J
A1990	Socastee Elementry - Site Prep to Building Pad	30	0	0%	28-Jan-16	09-Mar-16																	
A1840	Myrtle Beach Middle - Site Clearing and Building Pad	20	0	0%	04-Feb-16	02-Mar-16																	
A1880	St.James Intermediate - Install Piles	20	0	0%	18-Feb-16	16-Mar-16																	
A1890	Carolina Forest Middle - Foundations to Completion	317	0	0%	18-Feb-16	05-May-17																	
A1850	Myrtle Beach Middle - Foundations through Completion	317	0	0%	03-Mar-16	19-May-17																	
A1980	Socastee Elementry - Building Piles	20	0	0%	10-Mar-16	06-Apr-16																	
A1820	St James Intermediate - Foundations through Completion	317	0	0%	17-Mar-16	02-Jun-17																	
A1920	Socastee Elementry - Foundations to Completion	305	0	0%	07-Apr-16	07-Jun-17																	
A1970	Socastee Middle - Foundations through Completion	317	0	0%	07-Apr-16	23-Jun-17																	



☐ Actual Work
 ☐ Critical Remaining Work
 ▼ Summary
☐ Remaining Work
 ◆ Milestone

Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Tuesday, November 17, 2015 7:43 AM
To: Keith R. Powell
Subject: Hcs

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Keith
Can you send the latest version of the contract for review Robbie

Sent from my iPhone

Sheri L. Wainscott

From: Keith R. Powell
Sent: Tuesday, November 17, 2015 8:18 AM
To: Robbie Ferris
Subject: Re: Hcs

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

I will later this morning. Have not had any commentary from owner yet on any of the last 2 drafts and I am trying again this morning.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

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> On Nov 17, 2015, at 7:43 AM, Robbie Ferris <RFerris@sfla.biz> wrote:
>
> Keith
> Can you send the latest version of the contract for review
> Robbie
>
> Sent from my iPhone

Sheri L. Wainscott

From: Keith R. Powell
Sent: Tuesday, November 17, 2015 9:59 AM
To: Robbie Ferris (RFerris@sfla.biz)
Cc: William F. Halligan
Subject: RE: Hcs
Attachments: 673757_2 141 main - Checked Draft - (1)(1).pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

141 checked draft attached. Not confirmed by owner yet.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

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-----Original Message-----

From: Keith R. Powell
Sent: Tuesday, November 17, 2015 9:48 AM
To: Robbie Ferris (RFerris@sfla.biz); Mark Wolfe; Ara Heinz (AHeinz@horrycountyschools.net); John Gardner; Kenneth Generette; rmaxey@horrycountyschools.net
Cc: William F. Halligan
Subject: RE: Hcs

Robbie & HCS folks:

Ex B updated draft attached for review & comment. Waiting on HCS comments on 141 and Ex A.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

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> On Nov 17, 2015, at 7:43 AM, Robbie Ferris <RFerris@sfla.biz> wrote:
>
> Keith
> Can you send the latest version of the contract for review Robbie
>
> Sent from my iPhone



AIA®

Document A141™ – 2014

Standard Form of Agreement Between Owner and Design-BUILDER

AGREEMENT made as of the 19th day of November in the year two thousand fifteen (2015).

(In words, indicate day, month and year.)

BETWEEN the Owner:

(Name, legal status, address and other information)

Horry County Schools, South Carolina, a political subdivision of the State of South Carolina.

335 Four Mile Rd | PO Box 260005

Conway, SC 29528

District Office Phone 843.488.6700

and the Design-BUILDER:

(Name, legal status, address and other information)

FIRSTFLOOR ENERGY POSITIVE LLC,

333 Fayetteville St., Suite 225

Raleigh, NC 27601

for the following Project:

(Name, location and detailed description)

New Carolina Forest Middle School

(per Owner's Request for Proposals No. 1415-91)

The Owner and Design-BUILDER agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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ARTICLE 1. GENERAL PROVISIONS

§ 1.1 Owner's Criteria

This Agreement is based on the Owner's Criteria set forth in this Section 1.1.

(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable" or "unknown at time of execution." If the Owner intends to provide a set of design documents, and the requested information is contained in the design documents, identify the design documents and insert "see Owner's design documents" where appropriate.)

§ 1.1.1 The Owner's program for the Project:

(Set forth the program, identify documentation in which the program is set forth, or state the manner in which the program will be developed.)

Per "Design Requirements" published for Solicitation No. 1415-91.

§ 1.1.2 The Owner's design requirements for the Project and related documentation:

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User Notes:

(1496534068)

(Identify below, or in an attached exhibit, the documentation that contains the Owner's design requirements, including any performance specifications for the Project.)

Per "Design Requirements" published for Solicitation No. 1415-91.

§ 1.1.3 The Project's physical characteristics:

(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

Per "Design Requirements" published for Solicitation No. 1415-91.

§ 1.1.4 The Owner's anticipated Sustainable Objective for the Project, if any:

(Identify the Owner's Sustainable Objective for the Project such as Sustainability Certification, benefit to the environment, enhancement to the health and well-being of building occupants, or improvement of energy efficiency. If the Owner identifies a Sustainable Objective, incorporate AIA Document A141™-2014, Exhibit C, Sustainable Projects, into this Agreement to define the terms, conditions and Work related to the Owner's Sustainable Objective.)

Per "Design Requirements" published for Solicitation No. 1415-91.

§ 1.1.5

Number not used.

§ 1.1.6 The Owner's budget for the Work to be provided by the Design-Builder is set forth below:

(Provide total for Owner's budget, and if known, a line item breakdown of costs.)

Per "Design Requirements" published for Solicitation No. 1415-91 as amended through the Board of Education's action November 2, 2015.

§ 1.1.7 The Owner's design and construction milestone dates:

(Paragraphs deleted)

Per "Design Requirements" published for Solicitation No. 1415-91

§ 1.1.8 The Owner requires the Design-Builder to retain the following Architect, Consultants and Contractors at the Design-Builder's cost:

.1 Architect

SFL+A Architects, P.A. 333 Fayetteville Street Suite 225, Raleigh, NC 27601.

.2 Consultants

Per Design-Builder's Proposal to Owner pursuant to Solicitation No. 1415-91.

.3 Contractors

Per Design-Builder's Proposal to Owner pursuant to Solicitation No. 1415-91.

§ 1.1.9 Additional Owner's Criteria upon which the Agreement is based:

(Identify special characteristics or needs of the Project not identified elsewhere, such as historic preservation requirements.)

Per "Design Requirements" published for Solicitation No. 1415-91 (Summary of Services Required, Article 3).

§ 1.1.10 The Design-Builder shall confirm that the information included in the Owner's Criteria complies with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

§ 1.1.10.1 If the Owner's Criteria conflicts with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner of the conflict.

§ 1.1.11 If there is a change in the Owner's Criteria, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 1.1.12 If the Owner and Design-Builder intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions. Unless otherwise agreed, the parties will use AIA Document E203™-2013 to establish the protocols for the development, use, transmission, and exchange of digital data and building information modeling.

§ 1.2 Project Team

§ 1.2.1 The Owner identifies the following representative in accordance with Section 7.1.1:

Executive Director of Facilities (or a designee identified in writing by the owner.)
Horry County Schools
Facilities Department, 1160 E Highway 50
Conway, SC 29526
843.488.6965

§ 1.2.2 The persons or entities, in addition to the Owner's representative, who are required to review the Design-Builder's Submittals are as follows:
(List name, address and other information.)

N/A

§ 1.2.3 The Owner will retain the following consultants and separate contractors:
(List discipline, scope of work, and, if known, identify by name and address.)

Functional Performance Consultant (TBD)

§ 1.2.4 The Design-Builder identifies the following representative in accordance with Section 3.1.2:
(List name, address and other information.)

Robbie Ferris, S.C. AR.6106
FIRSTFLOOR ENERGY POSITIVE LLC,
333 Fayetteville St., Suite 225, Raleigh, NC 27601
919-573-6350

§ 1.2.5 Neither the Owner's nor the Design-Builder's representative shall be changed without ten days' written notice to the other party.

§ 1.3 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Section 14.3, the method of binding dispute resolution shall be the following:

☒ [X] Litigation in a court of competent
(Paragraphs deleted)
jurisdiction, nonjury before a circuit judge in Horry County, SC.

§ 1.4 Definitions

§ 1.4.1 Design-Build Documents. The Design-Build Documents consist of this Agreement between Owner and Design-Builder and its attached Exhibits (hereinafter, the "Agreement"); other documents listed in this Agreement; and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive.

§ 1.4.2 The Contract. The Design-Build Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Design-Build Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Design-Builder.

§ 1.4.3 The Work. The term "Work" means the design, construction and related services required to fulfill the Design-Builder's obligations under the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Design-Builder. The Work may constitute the whole or a part of the Project.

§ 1.4.4 The Project. The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and may include design and construction by the Owner and by separate contractors.

§ 1.4.5 Instruments of Service. Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Design-Builder, Contractor(s), Architect, and Consultant(s) under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials.

§ 1.4.6 Submittal. A Submittal is any submission to the Owner for review and approval demonstrating how the Design-Builder proposes to conform to the Design-Build Documents for those portions of the Work for which the Design-Build Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples. Submittals are not Design-Build Documents unless incorporated into a Modification.

§ 1.4.7 Owner. The Owner is the entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative. The Owner may have employees that are design professionals or otherwise skilled in construction or construction management, and such employees may, from time to time, perform various tasks or duties for or on behalf of the Owner under this Agreement. However, it is specifically understood that the Owner (including these agents and employees) has no obligation or duty to apply specialty or professional knowledge and skill, and shall not be held to have undertaken to provide or perform any aspect of the Owner's performance of this Agreement as a design professional or specially skilled and knowledgeable construction industry member or construction manager, and this principle applies regardless of the Owner's position titles or office division titles as may be applicable to such employees.

§ 1.4.8 Design-Builder. The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Design-Builder" means the Design-Builder or the Design-Builder's authorized representative.

§ 1.4.9 Consultant. A Consultant is a person or entity providing professional services for the Design-Builder for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. To the extent required by the relevant jurisdiction, the Consultant shall be lawfully licensed to provide the required professional services.

§ 1.4.10 Architect. The Architect is a person or entity providing design services for the Design-Builder for all or a portion of the Work, and is lawfully licensed to practice architecture in the applicable jurisdiction. The Architect is referred to throughout the Design-Build Documents as if singular in number.

§ 1.4.11 Contractor. A Contractor is a person or entity performing all or a portion of the construction, required in connection with the Work, for the Design-Builder. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor.

§ 1.4.12 Confidential Information. Confidential Information is information containing confidential or business proprietary information that is clearly marked as "confidential."

§ 1.4.13 Contract Time. Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, as set forth in the Design-Build Amendment for Substantial Completion of the Work.

§ 1.4.14 Day. The term "day" as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

§ 1.4.15 Contract Sum. The Contract Sum is the amount to be paid to the Design-Builder for performance of the Work after execution of the Design-Build Amendment, as identified in Article A.1 of the Design-Build Amendment.

ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS

§ 2.1 Compensation for Work Performed Prior To Execution of Design-Build Amendment

§ 2.1.1 Unless otherwise agreed, payments for Work performed prior to Execution of the Design-Build Amendment shall be made monthly. For the Design-Builder's performance of Work prior to the execution of the Design-Build Amendment, the Owner shall compensate the Design-Builder as follows:

(Insert amount of, or basis for, compensation, including compensation for any Sustainability Services, or indicate the exhibit in which the information is provided. If there will be a limit on the total amount of compensation for Work performed prior to the execution of the Design-Build Amendment, state the amount of the limit.)

The Design-Builder may invoice the Design-Builder may invoice the owner for not more than five hundred thousand dollars (\$500,000) for its Work performed prior to the execution of the Design-Build Amendment. This amount is within and part of the price agreed in the Design-Build Amendment.

(Paragraphs deleted)

§ 2.1 number not used]

(Paragraphs deleted)

(Table deleted)

§ 2.1.4 Payments to the Design-Builder Prior To Execution of Design-Build Amendment

§ 2.1.4.1 Payments are due and payable upon presentation of the Design-Builder's invoice. Amounts unpaid Forty-five (45) days after the invoice date shall bear interest at the rate of 5% p.a.

N/A

(Paragraph deleted)

§ 2.2 Contract Sum and Payment for Work Performed After Execution of Design-Build Amendment

For the Design-Builder's performance of the Work after execution of the Design-Build Amendment, the Owner shall pay to the Design-Builder the Contract Sum in current funds as agreed in the Design-Build Amendment.

ARTICLE 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT

§ 3.1 General

§ 3.1.1 The Design-Builder shall comply with any applicable licensing requirements in the jurisdiction where the Project is located.

Building Permit and Other Permits and Fees: No general building permit is required in accordance with § 6-9-110 of the South Carolina Code of Laws; however, the Contractor shall be required to provide mechanical, electrical, plumbing and other such permits which may be required for purposes of inspection at no additional cost to the District. Except for permits and fees which are the responsibility of the Contractor in the Contract Documents, the District shall secure and pay for necessary approvals, easements, assessments, utility impact fees, permits, and such charges required for the successful completion of the work.

§ 3.1.2 The Design-Builder shall designate in writing a representative who is authorized to act on the Design-Builder's behalf with respect to the Project.

§ 3.1.3 The Design-Builder shall perform the Work in accordance with the Design-Build Documents. The Design-Builder shall not be relieved of the obligation to perform the Work in accordance with the Design-Build Documents by the activities, tests, inspections or approvals of the Owner.

§ 3.1.3.1 The Design-Builder shall perform the Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

§ 3.1.3.2 Neither the Design-Builder nor any Contractor, Consultant, or Architect shall be obligated to perform any act which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder determines that implementation of any instruction received from the Owner, including those in the Owner's Criteria, would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner in writing. Upon verification by the Owner that a change to the Owner's Criteria is required to remedy the violation, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 3.1.4 The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Consultants, Contractors, and their agents and employees, and other persons or entities performing portions of the Work.

§ 3.1.5 **General Consultation.** The Design-Builder shall schedule and conduct periodic meetings with the Owner to review matters such as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.6 When the Owner's Design Requirements or applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals. The Owner understands and agrees that the services of the Design-Builder's Architect and the Design-Builder's other Consultants are performed in the sole interest of, and for the exclusive benefit of, the Design-Builder.

§ 3.1.7 The Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

The Office of School Facilities (OSF) shall determine the enforcement and interpretation of all the applicable codes and referenced standards on state buildings, including the District's school facilities.

§ 3.1.8 Progress Reports

§ 3.1.8.1 The Design-Builder shall keep the Owner informed of the progress and quality of the Work. As stated in the Design Requirements, the Design-Builder shall submit written progress reports, photographs of Work in progress, and other data to the Owner electronically, or through the Owner's option, project management software, showing estimated percentages of completion and other information identified below:

- .1 Work completed for the period;
- .2 Project schedule status;
- .3 Submittal schedule and status report, including a summary of outstanding Submittals;
- .4 Responses to requests for information to be provided by the Owner;
- .5 Approved Change Orders and Change Directives;
- .6 Pending Change Order and Change Directive status reports;
- .7 Tests and inspection reports;
- .8 Status report of Work rejected by the Owner;
- .9 Status of Claims previously submitted in accordance with Article 14;
- .10 Cumulative total of the Cost of the Work to date including the Design-Builder's compensation and Reimbursable Expenses, if any;
- .11 Current Project cash-flow and forecast reports; and
- .12 Additional information as designated by the Owner through its project management software data requirements.

(Paragraphs deleted)

§ 3.1.9 Design-Builder's Schedules

§ 3.1.9.1 The Design-Builder, promptly after execution of this Agreement, shall prepare and submit for the Owner's information a schedule for the Work. The schedule, including the time required for design and construction, shall not exceed time limits current under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

§ 3.1.9.2 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Owner.

§ 3.1.10 Certifications. Design-Builder shall include in each Application for Payment a certification from each of the Architect, Consultants, and Contractors, and furnish to the Owner, these certifications with respect to the documents and services provided by the Architect, Consultants, and Contractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Design-Builder's Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 3.1.11 Design-Builder's Submittals

§ 3.1.11.1 Prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Owner's approval. The Owner's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the Design-Builder's schedule provided in Section 3.1.9.1, (2) allow the Owner reasonable time to review Submittals, and (3) be periodically updated to reflect the progress of the Work. If the Design-Builder fails to submit a Submittal schedule, the Design-Builder shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of Submittals.

§ 3.1.11.2 By providing Submittals the Design-Builder represents to the Owner that it has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Design-Build Documents.

§ 3.1.11.3 The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Owner or its designee has approved the respective Submittal.

§ 3.1.11.4 The Work shall be in accordance with approved Submittals except that the Design-Builder shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Design-Build Documents. The Work may deviate from the Design-Build Documents only if the Design-Builder has notified the Owner in writing of a deviation from the Design-Build Documents at the time of the Submittal and a Modification is executed authorizing the identified deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the Owner's approval of the Submittals.

§ 3.1.11.5 All professional design services or certifications to be provided by the Design-Builder, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ 3.1.12 Warranty. The Design-Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Design-Build Documents require or permit otherwise. The Design-Builder further warrants that the Work will conform to the requirements of the Design-Build Documents and will be free from defects, except for those inherent in the quality of the Work or otherwise expressly permitted by

the Design-Build Documents. Work, materials, or equipment not conforming to these requirements may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.1.13 Royalties, Patents and Copyrights

§ 3.1.13.1 The Design-Builder shall pay all royalties and license fees.

§ 3.1.13.2 The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and its separate contractors and consultants harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Owner, or where the copyright violations are required in the Owner's Criteria. However, if the Design-Builder has reason to believe that the design, process or product required in the Owner's Criteria is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Design-Builder, the Owner shall give prompt written notice to the Design-Builder.

§ 3.1.14 Indemnification

§ 3.1.14.1 To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, including the Owner's agents and employees, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, but only to the extent caused by the negligent acts or omissions of the Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.1.14.

§ 3.1.14.2 The indemnification obligation under this Section 3.1.14 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.1.15 Contingent Assignment of Agreements

§ 3.1.15.1 Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause, pursuant to Sections 13.1.4 or 13.2.2, and only for those agreements that the Owner accepts by written notification to the Design-Builder and the Architect, Consultants, and Contractors whose agreements are accepted for assignment; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of an agreement, the Owner assumes the Design-Builder's rights and obligations under the agreement.

§ 3.1.15.2 Upon such assignment, if the Work has been suspended for more than 30 days, the compensation under the assigned agreement shall be equitably adjusted for increases in cost resulting from the suspension.

§ 3.1.15.3 Upon such assignment to the Owner under this Section 3.1.15, the Owner may further assign the agreement to a successor design-builder or other entity. If the Owner assigns the agreement to a successor design-builder or other entity, the Owner shall nevertheless remain legally responsible for all of the successor design-builder's or other entity's obligations under the agreement.

§ 3.1.16 Design-Builder's Insurance and Bonds. The Design-Builder shall purchase and maintain insurance and provide bonds as set forth in Exhibit B.

ARTICLE 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 4.1 General

§ 4.1.1 Any information submitted by the Design-Builder, and any interim decisions made by the Owner, shall be for the purpose of facilitating the design process and shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

[Numbers §4.2 & §4.3 intentionally not used]

(Paragraphs deleted)

§ 4.4 Design-Builder's Construction Proposal

§ 4.4.1 The Design-Builder's Construction Proposal shall include the following:

- .1 A list of the documents and other information, including the Design-Builder's clarifications, assumptions and deviations from the Owner's original Design Requirements and the Design-Builder's original Proposal Development Documents as proposed in the Owner's procurement leading to this Agreement, upon which the Design-Builder's Proposal is based;
- .2 The proposed Contract Sum, including the compensation method;
- .3 The proposed date the Design-Builder shall achieve Substantial Completion (or phased beneficial occupancy, if applicable and acceptable to the Owner);
- .4 An enumeration of any qualifications and exclusions, if applicable;
- .5 A list of the Design-Builder's key personnel, Contractors and suppliers; and
- .6 The date on which the Design-Builder's Construction Proposal expires.

§ 4.4.2 Submission of the Design-Builder's Construction Proposal shall constitute a representation by the Design-Builder that it has visited the site and become familiar with local conditions under which the Work is to be completed.

§ 4.4.3 If the Owner and Design-Builder agree on a proposal, the Owner and Design-Builder shall execute the Design-Build Amendment setting forth the terms of their agreement.

ARTICLE 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 5.1 Construction Documents

§ 5.1.1 Upon the execution of the Design-Build Amendment, the Design-Builder shall prepare Construction Documents. The Construction Documents shall establish the quality levels of materials and systems required. The Construction Documents shall be consistent with the Design-Build Documents.

§ 5.1.2 The Design-Builder shall provide the Construction Documents to the Owner for the Owner's information. If the Owner discovers any deviations between the Construction Documents and the Design-Build Documents, the Owner shall promptly notify the Design-Builder of such deviations in writing. The Construction Documents shall not modify the Design-Build Documents unless the Owner and Design-Builder execute a Modification. The failure of the Owner to discover any such deviations shall not relieve the Design-Builder of the obligation to perform the Work in accordance with the Design-Build Documents.

§ 5.1.2.1 The Design-Builder shall submit three copies of all Construction Documents prepared and submitted to Regulatory Agencies as a portion of the permitting and approval process for this work.

§ 5.2 Construction

§ 5.2.1 **Commencement.** Except as permitted in Section 5.2.2, construction shall not commence prior to execution of the Design-Build Amendment.

§ 5.2.2 If the Owner and Design-Builder agree in writing, construction may proceed prior to the execution of the Design-Build Amendment. However, such authorization shall not waive the Owner's right to reject the Design-Builder's Proposal.

§ 5.2.3 The Design-Builder shall supervise and direct the Work, using the Design-Builder's best skill and attention. The Design-Builder shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Design-Build Documents give other specific instructions concerning these matters.

§ 5.2.4 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

Maintenance of Record Drawings: The Contractor shall maintain at the worksite one (1) record copy of the Contract Documents including approved changes in good order and marked currently to record changes and selections made during performance of the work. A copy of submittals accepted by the District shall also be maintained at the worksite. These items shall be available to the Architect and District when present at the worksite. When required by the Contract Documents, the Contractor shall provide record drawings on all increments of the work such as, by way of illustration and not limitation, plumbing, electrical, mechanical, and all systems, such as fire and security systems, incorporated into the work. The Contractor shall furnish an electronic and paper copy of record drawings of "as-built" detail to the Architect at final completion of all work, excluding punch list items as required by the Contract Documents.

Professional Certifications: When professional certification of performance criteria for materials, systems, or equipment is required by the Contract Documents, the District shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

Contractor's Quality Control Program: The Contractor shall institute and maintain throughout the contract term a quality control program, designed to ensure the work performed is in accordance with the Contract Documents, including any changes, at all times and in all respects. The program shall include providing daily supervision and conducting frequent inspections by the Worksite Superintendent(s).

1. **Compliance with Employment Laws:** By entering into a *Contract Agreement*, the Contractor agrees to abide by all applicable laws pertaining to employment including, by way of illustration and not limitation, the following:

- A. Title VII of the Civil Rights Act of 1964, as may be amended.
- B. Age Discrimination in Employment Act of 1964, as may be amended.
- C. Title I of the Americans Disabilities Act of 1990, as may be amended.
- D. Equal Pay Act of 1963, as may be amended.
- E. Fair Labor Standards Act, as may be amended.
- F. South Carolina Wages Act, Code 37-10-10 et seq., as may be amended.
- G. South Carolina Worker's Compensation Act, Code 42-1-10 et seq., as may be amended.

The Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, handicap, or national origin except when such condition is a bona fide occupational qualification reasonably necessary for normal operations of the Contractor. The Contractor, in all solicitations or advertisements for employees, shall state the Contractor is an "Equal Opportunity Employer." The Contractor agrees to post in conspicuous places, visible to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause and shall include the provision of this paragraph in every subcontract or purchase agreement of more than \$10,000.

Employment Taxes and Benefits: The District shall not withhold from the contract payments any Federal or State income taxes, or any employment-related taxes normally withheld on the District's employees. Further, the District shall not provide any employment related insurances or other benefits such as worker's compensation for the benefit of any Contractor, subcontractor or supplier employees.

Project Key Staff – Project Manager: The Contractor shall assign a skilled, experienced, and dedicated Project Manager to the project and identified in Exhibit A. The Project Manager shall secure the materials of proper quality and quantity to meet the Contract Documents and manage the appropriate timing of all materials, sub-contracted work, and Contractor provided labor to ensure the continual progress of the work to meet the substantial completion date. The Contractor shall not change the Project Manager identified in the *Scope of Work (Exhibit A)* or the duties and status of the Project Manager during the course of the project without approval of the District.

Project Key Staff -- Worksite Superintendent(s): The Contractor shall employ at least one (1) full-time, competent Worksite Superintendent and, if required by the Contract Documents, an additional part-time or full-time, competent secondary Worksite Superintendent if expedient for the size and scope of the project. Exhibit A identifies the Worksite Superintendent(s). No less than one (1) Worksite Superintendent shall be in attendance at the worksite at all times during performance of any work by the Contractor's own forces or subcontractors and during delivery of any materials. The Worksite Superintendent shall not perform the work of any trade or other duties; however, the secondary Worksite Superintendent may perform part-time work of a trade or the duties of OSHA Compliance Officer or fireguard, if approved by the District. The Contractor shall not change any Worksite Superintendent identified in the *Scope of Work (Exhibit A)* or the duties or status of same during the course of the project without approval of the District. The Worksite Superintendent(s) shall enforce strict discipline and good order among the Contractor's representatives, agents, employees, subcontractors and suppliers.

Worksite Communications: The Project Manager and Worksite Superintendent(s) are representatives of the Design Builder and communications given to them, either orally or in writing, shall be as binding as if given to the Principal of the Design Builder.

§ 5.3 Labor and Materials

§ 5.3.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services, necessary for proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

§ 5.3.2 When a material or system is specified in the Design-Build Documents, the Design-Builder may make substitutions only in accordance with Article 6.

§ 5.3.3 The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Work. The Design-Builder shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 5.4 Taxes

The Design-Builder shall pay sales, consumer, use and similar taxes, for the Work provided by the Design-Builder, that are legally enacted when the Design-Build Amendment is executed, whether or not yet effective or merely scheduled to go into effect.

§ 5.5 Permits, Fees, Notices and Compliance with Laws

§ 5.5.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall secure and pay for the permits, fees, licenses, and inspections by government agencies, necessary for proper execution of the Work and Substantial Completion of the Project.

§ 5.5.2 The Design-Builder shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, applicable to performance of the Work.

§ 5.5.3 **Concealed or Unknown Conditions.** If the Design-Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, the Design-Builder shall promptly provide notice to the Owner before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Design-Builder in writing, stating the reasons. If the Design-Builder disputes the Owner's determination or recommendation, the Design-Builder may proceed as provided in Article 14.

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§ 5.5.4 If, in the course of the Work, the Design-Builder encounters human remains, or recognizes the existence of burial markers, archaeological sites, or wetlands, not indicated in the Design-Build Documents, the Design-Builder shall immediately suspend any operations that would affect them and shall notify the Owner. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Design-Builder shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 14.

§ 5.6 Allowances

§ 5.6.1 The Design-Builder shall include in the Contract Sum all allowances stated in the Design-Build Documents. Items covered by allowances shall be supplied for such amounts, and by such persons or entities as the Owner may direct, but the Design-Builder shall not be required to employ persons or entities to whom the Design-Builder has reasonable objection.

§ 5.6.2 Unless otherwise provided in the Design-Build Documents,

- .1 allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 the Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts, shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 5.6.2.1 and (2) changes in Design-Builder's costs under Section 5.6.2.2.

§ 5.6.3 The Owner shall make selections of materials and equipment with reasonable promptness for allowances requiring Owner selection.

§ 5.7 Key Personnel, Contractors and Suppliers

§ 5.7.1 The Design-Builder shall not employ personnel, or contract with Contractors or suppliers to whom the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable and timely objection.

§ 5.7.2 If the Design-Builder desires to change any of the personnel, Contractors or suppliers identified in the Design-Build Amendment, including but not limited to any contractor or design professional identified by the Design-Builder in its Request for Qualifications response, the Design-Builder shall notify the Owner and provide the name and qualifications of the proposed new personnel, design professional, Contractor or supplier. The Owner may reply within 14 days to the Design-Builder in writing, stating (1) whether the Owner has reasonable objection to the proposed new personnel, design professional, Contractor or supplier or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.7.3 Except for those persons or entities already identified or required in the Design-Build Amendment, the Design-Builder, as soon as practicable after execution of the Design-Build Amendment, shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner may reply within 14 days to the Design-Builder in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.7.3.1 If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection.

§ 5.8 Documents and Submittals at the Site

In addition to any Owner requirements to keep electronic project data up to date, the Design-Builder shall maintain at the site for the Owner one copy of the Design-Build Documents and a current set of the Construction Documents,

in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals. The Design-Builder shall deliver these items to the Owner in accordance with Section 9.10.2 as a record of the Work as constructed.

§ 5.9 Use of Site

The Design-Builder shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment.

§ 5.10 Cutting and Patching

The Design-Builder shall not cut, patch or otherwise alter fully or partially completed construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

§ 5.11 Cleaning Up

§ 5.11.1 The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Design-Builder shall remove waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 5.11.2 If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Design-Builder.

§ 5.12 Access to Work

The Design-Builder shall provide the Owner and its separate contractors and consultants access to the Work in preparation and progress wherever located. The Design-Builder shall notify the Owner regarding Project safety criteria and programs, which the Owner, and its contractors and consultants, shall comply with while at the site.

§ 5.13 Construction by Owner or by Separate Contractors

§ 5.13.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 5.13.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces; and to award separate contracts in connection with other portions of the Project, or other construction or operations on the site, under terms and conditions identical or substantially similar to this Contract, including those terms and conditions related to insurance and waiver of subrogation. The Owner shall notify the Design-Builder promptly after execution of any separate contract. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make a Claim as provided in Article 14.

§ 5.13.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Design-Builder" in the Design-Build Documents in each case shall mean the individual or entity that executes each separate agreement with the Owner.

§ 5.13.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces, and of each separate contractor, with the Work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.

§ 5.13.1.4 Unless otherwise provided in the Design-Build Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or separate contractors, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, that apply to the Design-Builder under the Contract.

§ 5.14 Mutual Responsibility

§ 5.14.1 The Design-Builder shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Design-Builder's construction and operations with theirs as required by the Design-Build Documents.

§ 5.14.2 If part of the Design-Builder's Work depends upon construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, prepare a written report to the Owner, identifying apparent discrepancies or defects in the construction or operations by the Owner or separate contractor that would render it unsuitable for proper execution and results of the Design-Builder's Work. Failure of the Design-Builder to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

§ 5.14.3 The Design-Builder shall reimburse the Owner and other contractor(s) for costs the Owner and other contractor(s), respectively, incur because of the Design-Builder's delays, improperly timed activities or defective construction.

§ 5.14.4 The Design-Builder shall promptly remedy damage the Design-Builder wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 5.14.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching the Work as the Design-Builder has with respect to the construction of the Owner or separate contractors in Section 5.10.

§ 5.15 Owner's Right to Clean Up

If a dispute arises among the Design-Builder, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and will allocate the cost among those responsible.

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 General

§ 6.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order or Change Directive, subject to the limitations stated in this Article 6 and elsewhere in the Design-Build Documents.

§ 6.1.2 A Change Order shall be based upon agreement between the Owner and Design-Builder. The Owner may issue a Change Directive without agreement by the Design-Builder.

§ 6.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive.

§ 6.2 Change Orders

A Change Order is a written instrument signed by the Owner and Design-Builder stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 6.3 Change Directives

§ 6.3.1 A Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time. The Owner may by Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time being adjusted accordingly.

§ 6.3.2 A Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 6.3.3 If the Change Directive provides for an adjustment to the Contract Sum or, if prior to execution of the Design-Build Amendment, an adjustment in the Design-Builder's compensation, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Design-Build Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 6.3.7.

§ 6.3.4 If unit prices are stated in the Design-Build Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Design-Builder, the applicable unit prices shall be equitably adjusted.

§ 6.3.5 Upon receipt of a Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time.

§ 6.3.6 A Change Directive signed by the Design-Builder indicates the Design-Builder's agreement therewith, including adjustment in Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 6.3.7 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the method for adjustment in the Design-Builder's compensation, the Owner shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 6.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section 6.3.7 shall be limited to the following:

- .1 Additional costs of professional services;
- .2 Costs of labor, including social security, unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .3 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .4 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Design-Builder or others;
- .5 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; provided that costs of premiums, permits, and taxes that are based on marginal additions to an existing sum or quantity may all be reasonably estimated subject to correction at the time of Final Payment or other agreed time when the actual costs of the marginal additions can be determined or mutually agreed upon; and
- .6 Additional costs of supervision and field office personnel directly attributable to the change.

Allowable Overhead and Profit Charges: Additional overhead and profit attributable to the change in contract pricing shall not exceed the following:

- A. For work performed by the Contractor's own forces, a maximum of ten percent (10%) of the allowable direct costs or the unit pricing negotiated at the time of award.
- B. For work performed by a subcontractor's own forces, a maximum of ten percent (10%) of the allowable direct costs.

C. For work performed by a subcontractor, overhead and profit of a maximum of five percent (5%) is allowable by the Contractor for administration of the sub-contract.

Retainage: The District requires a retainage of three and one-half percent (3.5%) of the total contract price, as may be amended by any approved *Change Order*, to be withheld from the Contractor's payments throughout the term of the *Contract Agreement* and payable at the time of final payment after a) full completion of all work to be performed and all requirements established in the *Contract Agreement* and acceptance by the District, b) submittal of all closeout documents, and c) submittal of an affidavit of payment of debts/claims, if requested by the District, for every subcontractor who performed work on the project evidencing they have received final payment of undisputed work and retainage withheld. As a condition of the contract, no more than three and one-half percent (3.5%) shall be retained from the progress payments of any subcontractor by the Contractor until final completion of that portion of the work. Prompt payment of retainage to all subcontractors at final completion of their acceptable work regardless of timing during the contract is mandatory. The Contractor shall, at final completion, ensure no amount of the Contractor's retained funds is allocable to the completed and accepted work of any subcontractor nor to materials or equipment purchased from any supplier unless such amounts are in dispute and the Contractor has not requested payment for such disputed amounts to date. Such amounts in dispute shall be identified on the Contractor's affidavit of payment of debts/claims submitted with final documents.

§ 6.3.8 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum or, if prior to execution of the Design-Build Amendment, in the Design-Builder's compensation, shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 6.3.9 Pending final determination of the total cost of a Change Directive to the Owner, the Design-Builder may request payment for Work completed under the Change Directive in Applications for Payment. The Owner will make an interim determination for purposes of certification for payment for those costs deemed to be reasonably justified. The Owner's interim determination of cost shall adjust the Contract Sum or, if prior to execution of the Design-Build Amendment, the Design-Builder's compensation, on the same basis as a Change Order, subject to the right of Design-Builder to disagree and assert a Claim in accordance with Article 14.

§ 6.3.10 When the Owner and Design-Builder agree with a determination concerning the adjustments in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Owner and Design-Builder shall execute a Change Order. Change Orders may be issued for all or any part of a Change Directive.

ARTICLE 7 OWNER'S RESPONSIBILITIES

§ 7.1 General

§ 7.1.1 The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization.

§ 7.1.2 The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's schedule agreed to by the Owner. The Owner shall furnish to the Design-Builder, within 15 days after receipt of a written request, information necessary and relevant for the Design-Builder to give notices of project commencement and take other action to protect the integrity and exclusivity of the project payment bond(s).

§ 7.2 Information and Services Required of the Owner

§ 7.2.1 The Owner shall furnish information or services required of the Owner by the Design-Build Documents with reasonable promptness.

§ 7.2.2 The Owner shall provide, to the extent under the Owner's control and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems; chemical, air and water pollution; hazardous materials; or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site. Upon receipt of a written request from the Design-Builder, the Owner shall also provide surveys

describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site under the Owner's control.

§ 7.2.3 The Owner shall promptly obtain easements, zoning variances, and legal authorizations or entitlements regarding site utilization where essential to the execution of the Project.

§ 7.2.4 The Owner shall cooperate with the Design-Builder in securing land development, zoning, and other permits, licenses and inspections.

§ 7.2.5 The services, information, surveys and reports required to be provided by the Owner under this Agreement, shall be furnished at the Owner's expense, and except as otherwise specifically provided in this Agreement or elsewhere in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing, the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof. In no event shall the Design-Builder be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Work.

§ 7.2.6 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder.

§ 7.2.7 Prior to the execution of the Design-Build Amendment, the Design-Builder may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Design-Build Documents and the Design-Builder's Proposal. Thereafter, the Design-Builder may only request such evidence if (1) the Owner fails to make payments to the Design-Builder as the Design-Build Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Design-Builder identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Design-Builder.

§ 7.2.8 Except as otherwise provided in the Design-Build Documents or when direct communications have been specially authorized, the Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder.

§ 7.2.9 Unless required by the Design-Build Documents to be provided by the Design-Builder, the Owner shall, upon request from the Design-Builder, furnish the services of geotechnical engineers or other consultants for investigation of subsurface, air and water conditions when such services are reasonably necessary to properly carry out the design services furnished by the Design-Builder. In such event, the Design-Builder shall specify the services required. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

§ 7.2.10 The Owner shall purchase and maintain insurance as set forth in Exhibit B.

§ 7.3 Submittals

§ 7.3.1 The Owner shall review and approve or take other appropriate action on Submittals. Review of Submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities; or for substantiating instructions for installation or performance of equipment or systems; or for determining that the Submittals are in conformance with the Design-Build Documents, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents. The Owner's action will be taken in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Owner's judgment to permit adequate review. The Owner's review of Submittals shall not relieve the Design-Builder of the obligations under Sections 3.1.11, 3.1.12, and 5.2.3. The Owner's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner, of any construction means, methods, techniques, sequences or procedures. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 7.3.2 Upon review of the Submittals required by the Design-Build Documents, the Owner or its designee shall notify the Design-Builder of any non-conformance with the Design-Build Documents the Owner discovers.

§ 7.4 Visits to the site by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quality or quantity of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, because these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents.

§ 7.5 The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of, and will not be responsible for acts or omissions of the Design-Builder, Architect, Consultants, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

§ 7.6 The Owner has the authority to reject Work that does not conform to the Design-Build Documents. The Owner shall have authority to require inspection or testing of the Work in accordance with Section 15.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Design-Builder, the Architect, Consultants, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 7.7 The Owner shall determine the date or dates of Substantial Completion in accordance with Section 9.8 and the date of final completion in accordance with Section 9.10.

§ 7.8 Owner's Right to Stop Work

If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section 11.2 or persistently fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity, except to the extent required by Section 5.13.1.3.

§ 7.9 Owner's Right to Carry Out the Work

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner. For Work on the critical path to beneficial occupancy of the Project (or defined component thereof) the ten-day period referenced herein is reduced to five (5) days during the 60 days prior to substantial completion as shown on the last schedule properly submitted under § 3.1.9.

ARTICLE 8 TIME

§ 8.1 Progress and Completion

§ 8.1.1 Time limits stated in the Design-Build Documents are of the essence of the Contract. By executing the Design-Build Amendment the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.1.2 The Design-Builder shall not, except by agreement of the Owner in writing, commence the Work prior to the effective date of insurance, other than property insurance, required by this Contract. The Contract Time shall not be adjusted as a result of the Design-Builder's failure to obtain insurance required under this Contract.

§ 8.1.3 The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.1.4 LIQUIDATED DAMAGES FOR LATE SUBSTANTIAL AND FINAL COMPLETION OF THE WORK.

The Owner and the Contractor agree that time is of the essence and that the Owner will suffer significant damage, hardship, and loss if the Work is not substantially completed within the Contract Time. Damages the Owner will incur as a result of breach of contract by failure to achieve substantial completion are: use of relocatable classrooms; use of alternate sites for the educational program; disruption of class locations; disruption of athletic program; disruption of public service activities planned for the project; loss of rental of the project; security risks due to comingling of project workers with additional persons on and near the site; additional safety risks of equipment, vehicles, and unfinished work on the campus during the academic term; general disruption of the teaching and learning process due to project activities during the academic term; moving equipment during the academic term when students and full staff are present; harm to the Owner's reputation and established goodwill among the community, parents, students, and staff due to late delivery of the project; loss of student morale and academic performance due to the ongoing Work during the academic term; harm to the Owner's public relations; disruption and inefficiency of the management of all the Owner's facilities and other current construction projects. The measurement of such damages is difficult. Accordingly, such damages are converted to Liquidated Damages as follows: for each day the Work is not Substantially Complete beyond the Contract Time allowed for Substantial Completion, liquidated damages of \$1000 will be due from the Design-Builder to the Owner; for each day the Work is not Finally Complete beyond the Contract Time allowed for Final Completion, liquidated damages of \$500 will be due from the Design-Builder to the Owner.

§ 8.2 Delays and Extensions of Time

§ 8.2.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a consultant or separate contractor employed by the Owner; or by changes ordered in the Work by the Owner; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control; or by delay authorized by the Owner pending mediation and binding dispute resolution or by other causes that the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

§ 8.2.2 Claims relating to time shall be made in accordance with applicable provisions of Article 14.

(Paragraph deleted)

§ 8.2.3 **Weather Delays:** When adverse weather conditions are the basis for a request for additional time, such request shall be documented by data substantiating the weather conditions a) were abnormal for a period of time which could not have been reasonably anticipated; b) had an adverse effect on the work scheduled, and alternate work unaffected by the weather could not have been done; and c) had an adverse effect on the construction schedule such that the loss of work time will adversely impact the established completion date. The Contractor must make every effort to mitigate the potential effect of the weather on the construction schedule including, but not limited to, rescheduling of subcontractors, pumping water from work areas, rescheduling work hours to alternate work days within the work week, or other such actions. Such time extension request shall be in writing and submitted to the District for approval within ten (10) days from the end of the event causing the impact on the construction schedule. An extension of time not requested within the appropriate time period shall not be considered. The approved extension of time shall be incorporated in the next *Change Order*.

§ 8.2.4 **Anticipated Weather Delays:** A total of five (5) days per calendar month (non-cumulative) shall be anticipated by the Contractor as "adverse weather," and such time shall not be considered justification for an extension of time. Such anticipated adverse weather days are established only for normally scheduled work days, excluding Saturdays, Sundays and major holidays, unless such adverse weather conditions on those days are severe enough to impact the scheduled work on the following work day. If adverse weather days beyond the five (5) days anticipated are substantiated and the Contractor could not mitigate the impact of the additional adverse weather days, an extension of time may be allowed only to the extent of the actual impact on the last approved construction schedule and only to the extent of one (1) full day of extended time for each full working day of adverse weather conditions which prevented a forty-hour work week within a seven (7) day calendar week. A request for adverse weather extension shall not be allowed after the date established for substantial completion.

ARTICLE 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION

§ 9.1 Contract Sum

The Contract Sum is stated in the Design-Build Amendment.

§ 9.2 Schedule of Values

Where the Contract Sum is based on a stipulated sum or Guaranteed Maximum Price, the Design-Builder, prior to the first Application for Payment after execution of the Design-Build Amendment shall submit to the Owner a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The application shall be notarized, if required, and supported by data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from the Architect, Consultants, Contractors, and material suppliers, and shall reflect retainage if provided for in the Design-Build Documents.

§ 9.3.1.1 As provided in Section 6.3.9, Applications for Payment may include requests for payment on account of changes in the Work that have been properly authorized by Change Directives, or by interim determinations of the Owner, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay the Architect, Consultant, Contractor, material supplier, or other persons or entities providing services or work for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

§ 9.3.2 Unless otherwise provided in the Design-Build Documents, payments shall be made for services provided as well as materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Design-Builder warrants that title to all Work, other than Instruments of Service, covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder, Architect, Consultants, Contractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 Certificates for Payment

The Owner shall, within twenty-one days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a Certificate for Payment indicating the amount the Owner determines is properly due, and notify the Design-Builder in writing of the Owner's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Owner may withhold a Certificate for Payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Design-Builder's Application for Payment, or the quality of the Work is not in accordance with the Design-Build Documents. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the Design-Builder as provided in Section 9.4. If the Design-Builder and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount that the Owner deems to be due and owing. The Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible because of

.1 defective Work, including design and construction, not remedied;

- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design-Builder;
- .3 failure of the Design-Builder to make payments properly to the Architect, Consultants, Contractors or others, for services, labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated or substantial failure to carry out the Work in accordance with the Design-Build Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Owner withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Design-Builder and to the Architect or any Consultants, Contractor, material or equipment suppliers, or other persons or entities providing services or work for the Design-Builder to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered.

§ 9.6 Progress Payments

§ 9.6.1 After the Owner has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Design-Build Documents.

§ 9.6.2 The Design-Builder shall pay each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder no later than the time period required by applicable law, but in no event more than seven days after receipt of payment from the Owner the amount to which the Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the portion of the Work performed by the Architect, Consultant, Contractor, or other person or entity. The Design-Builder shall, by appropriate agreement with each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder, require each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder to make payments to subconsultants and subcontractors in a similar manner.

§ 9.6.3 The Owner will, on request and if practicable, furnish to the Architect, a Consultant, Contractor, or other person or entity providing services or work for the Design-Builder, information regarding percentages of completion or amounts applied for by the Design-Builder and action taken thereon by the Owner on account of portions of the Work done by such Architect, Consultant, Contractor or other person or entity providing services or work for the Design-Builder.

§ 9.6.4 The Owner has the right to request written evidence from the Design-Builder that the Design-Builder has properly paid the Architect, Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, amounts paid by the Owner to the Design-Builder for the Work. Owner shall have the right to contact the Architect, Consultants, and Contractors to ascertain whether they have been properly paid. The Owner shall have no obligation to pay or to see to the payment of money to a Consultant or Contractor.

§ 9.6.5 Design-Builder payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Design-Build Documents.

(Paragraph deleted)

§ 9.7 Failure of Payment

If the Owner does not issue a Certificate for Payment, through no fault of the Design-Builder, within the time required by the Design-Build Documents, then the Design-Builder may, upon seven additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be

extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Design-Build Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion is the date certified by the Owner in accordance with this Section 9.8.

§ 9.8.2 When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the Owner an occupancy permit issued by the South Carolina Office of School Facilities and a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Design-Build Documents.

§ 9.8.3 Upon receipt of the Design-Builder's list, the Owner shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the Design-Builder's list, which is not sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Design-Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner. In such case, the Design-Builder shall then submit a request for another inspection by the Owner to determine Substantial Completion.

§ 9.8.4 Prior to issuance of the Certificate of Substantial Completion under Section 9.8.5, the Owner and Design-Builder shall discuss and then determine the parties' obligations to obtain and maintain property insurance following issuance of the Certificate of Substantial Completion.

§ 9.8.5 When the Work or designated portion thereof is substantially complete, the Design-Builder will prepare for the Owner's signature an occupancy permit issued by the South Carolina Office of School Facilities and a Certificate of Substantial Completion that shall, upon the Owner's signature, establish the date of Substantial Completion; establish responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Design-Builder shall finish all items on the list accompanying the Certificate. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.6 The Certificate of Substantial Completion shall be submitted by the Design-Builder to the Owner for written acceptance of responsibilities assigned to it in the Certificate. Upon the Owner's acceptance, and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to, by endorsement or otherwise, by the insurer providing property insurance and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section 9.8.2. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Design-Builder.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner and Design-Builder shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Design-Build Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Design-Builder's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection. When the Owner finds the Work acceptable under the Design-Build Documents and the Contract fully performed, the Owner will, subject to Section 9.10.2, promptly issue a final Certificate for Payment.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner or the Owner's property might be responsible or encumbered, (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, (5) as-constructed record copy of the Construction Documents marked to indicate field changes and selections made during construction, (6) manufacturer's warranties, product data, and maintenance and operations manuals, and (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or releases and waivers of liens, claims, security interests, or encumbrances, arising out of the Contract, to the extent and in such form as may be designated by the Owner. If an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for the Design-Builder, refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of Change Orders affecting final completion, the Owner shall, upon application by the Design-Builder, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder to the Owner prior to issuance of payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Design-Build Documents;
- .3 terms of special warranties required by the Design-Build Documents;
- .4 post-occupancy services to be provided by or through the Design-Builder.

§ 9.10.5 Acceptance of final payment by the Design-Builder shall constitute a waiver of claims by the Design-Builder except those previously made in writing and identified by the Design-Builder as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Design-Builder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Design-Builder shall be responsible for precautions for the safety of, and reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;

- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Design-Builder or the Architect, Consultants, or Contractors, or other person or entity providing services or work for the Design-Builder; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, or structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Design-Builder shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property, or their protection from damage, injury or loss.

§ 10.2.3 The Design-Builder shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notify owners and users of adjacent sites and utilities of the safeguards and protections.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods, are necessary for execution of the Work, the Design-Builder shall exercise utmost care, and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3, caused in whole or in part by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections 10.2.1.2 and 10.2.1.3; except damage or loss attributable to acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section 3.1.14.

§ 10.2.6 The Design-Builder shall designate a responsible member of the Design-Builder's organization, at the site, whose duty shall be the prevention of accidents. This person shall be the Design-Builder's superintendent unless otherwise designated by the Design-Builder in writing to the Owner.

§ 10.2.7 The Design-Builder shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 **Injury or Damage to Person or Property.** If the Owner or Design-Builder suffers injury or damage to person or property because of an act or omission of the other, or of others for whose acts such party is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials

§ 10.3.1 The Design-Builder is responsible for compliance with any requirements included in the Design-Build Documents regarding hazardous materials. If the Design-Builder encounters a hazardous material or substance not addressed in the Design-Build Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing.

§ 10.3.2 Upon receipt of the Design-Builder's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Design-Build Documents, the Owner shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The

Design-Builder will promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Design-Builder. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design-Builder, the Architect, Consultants, and Contractors, and employees of any of them, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to, or destruction of, tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Design-Builder brings to the site unless such materials or substances are required by the Owner's Criteria. The Owner shall be responsible for materials or substances required by the Owner's Criteria, except to the extent of the Design-Builder's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Design-Builder shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Design-Builder brings to the site and negligently handles, or (2) where the Design-Builder fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Design-Builder, the Design-Builder is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Design-Build Documents, the Owner shall indemnify the Design-Builder for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss.

ARTICLE 11 UNCOVERING AND CORRECTION OF WORK

§ 11.1 Uncovering of Work

The Owner may request to examine a portion of the Work that the Design-Builder has covered to determine if the Work has been performed in accordance with the Design-Build Documents. If such Work is in accordance with the Design-Build Documents, the Owner and Design-Builder shall execute a Change Order to adjust the Contract Time and Contract Sum, as appropriate. If such Work is not in accordance with the Design-Build Documents, the costs of uncovering and correcting the Work shall be at the Design-Builder's expense and the Design-Builder shall not be entitled to a change in the Contract Time unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs and the Contract Time will be adjusted as appropriate.

§ 11.2 Correction of Work

§ 11.2.1 Before or After Substantial Completion. The Design-Builder shall promptly correct Work either rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected or nonconforming Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for any design consultant employed by the Owner whose expenses and compensation were made necessary thereby, shall be at the Design-Builder's expense.

§ 11.2.2 After Substantial Completion

§ 11.2.2.1 In addition to the Design-Builder's obligations under Section 3.1.12, if, within two years after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found not to be in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the two-year period for correction of the Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.9.

§ 11.2.2.2 The two-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 11.2.2.3 The two-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section 11.2.

§ 11.2.3 The Design-Builder shall remove from the site portions of the Work that are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

§ 11.2.4 The Design-Builder shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether completed or partially completed, caused by the Design-Builder's correction or removal of Work that is not in accordance with the requirements of the Design-Build Documents.

§ 11.2.5 Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder has under the Design-Build Documents. Establishment of the two-year period for correction of Work as described in Section 11.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

§ 11.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made. Acceptance of Nonconforming Work may only be evidenced by written agreement specifying the nonconformity and the Owner's informed consent to accept it. Nonconforming Work shall not become accepted Work by inaction or implication.

ARTICLE 12 COPYRIGHTS AND LICENSES

§ 12.1 Drawings, specifications, and other documents furnished by the Design-Builder, including those in electronic form, are Instruments of Service. The Design-Builder, and the Architect, Consultants, Contractors, and any other person or entity providing services or work for any of them, shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements, or for similar purposes in connection with the Project, is not to be construed as publication in derogation of the reserved rights of the Design-Builder and the Architect, Consultants, and Contractors, and any other person or entity providing services or work for any of them.

§ 12.2 The Design-Builder and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 12.3 Upon execution of the Agreement, the Design-Builder grants to the Owner a limited, irrevocable and non-exclusive license to use the Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under the Design-Build Documents. The license granted under this section permits the Owner to authorize its consultants and separate contractors to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project.

§ 12.3.1 The Design-Builder shall obtain non-exclusive licenses from the Architect, Consultants, and Contractors, that will allow the Design-Builder to satisfy its obligations to the Owner under this Article 12. The Design-Builder's licenses from the Architect and its Consultants and Contractors shall also allow the Owner, in the event this Agreement is terminated for any reason to obtain a limited, irrevocable and non-exclusive license solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner (1) agrees to pay to the Architect, Consultant or Contractor all amounts due, and (2) provide the Architect, Consultant or Contractor with the Owner's written agreement to indemnify and hold harmless the Architect, Consultant or Contractor from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service.

§ 12.3.2 In the event the Owner alters the Instruments of Service without the author's written authorization or uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such uses. The terms of this Section 12.3.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Sections 13.1.4 or 13.2.2.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination or Suspension Prior to Execution of the Design-Build Amendment

§ 13.1.1 If the Owner fails to make payments to the Design-Builder for Work prior to execution of the Design-Build Amendment in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Design-Builder's option, cause for suspension of performance of services under this Agreement. If the Design-Builder elects to suspend the Work, the Design-Builder shall give seven days' written notice to the Owner before suspending the Work. In the event of a suspension of the Work, the Design-Builder shall have no liability to the Owner for delay or damage caused by the suspension of the Work. Before resuming the Work, the Design-Builder shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.2 If the Owner suspends the Project, the Design-Builder shall be compensated for the Work performed prior to notice of such suspension. When the Project is resumed, the Design-Builder shall be compensated for expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Design-Builder, the Design-Builder may terminate this Agreement by giving not less than seven days' written notice.

§ 13.1.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 13.1.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Design-Builder for the Owner's convenience and without cause.

§ 13.1.6 In the event of termination not the fault of the Design-Builder, the Design-Builder shall be compensated for Work performed prior to termination and any other expenses directly attributable to termination for which the Design-Builder is not otherwise compensated. In no event shall the Design-Builder's compensation under this Section 13.1.6 be greater than the compensation set forth in Section 2.1.

§ 13.2 Termination or Suspension Following Execution of the Design-Build Amendment

§ 13.2.1 Termination by the Design-Builder

§ 13.2.1.1 The Design-Builder may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Design-Builder, the Architect, a Consultant, or a Contractor, or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Owner has not issued a Certificate for Payment and has not notified the Design-Builder of the reason for withholding certification as provided in Section 9.5.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Design-Build Documents; or
- .4 The Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required by Section 7.2.7.

§ 13.2.1.2 The Design-Builder may terminate the Contract if, through no act or fault of the Design-Builder, the Architect, a Consultant, a Contractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 13.2.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 13.2.1.3 If one of the reasons described in Section 13.2.1.1 or 13.2.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit on that executed Work, and costs incurred by reason of such termination.

§ 13.2.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or any other persons or entities performing portions of the Work under contract with the Design-Builder because the Owner has repeatedly failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven additional days' written notice to the Owner, terminate the Contract and recover from the Owner as provided in Section 13.2.1.3.

§ 13.2.2 Termination by the Owner For Cause

§ 13.2.2.1 The Owner may terminate the Contract if the Design-Builder

- .1 fails to submit the Proposal by the date required by this Agreement, or if no date is indicated, within a reasonable time consistent with the date of Substantial Completion;
- .2 repeatedly refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, or workers or proper materials;
- .3 fails to make payment to the Architect, Consultants, or Contractors for services, materials or labor in accordance with their respective agreements with the Design-Builder;
- .4 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .5 is otherwise guilty of substantial breach of a provision of the Design-Build Documents.

§ 13.2.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

- .1 Exclude the Design-Builder from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;
- .2 Accept assignment of the Architect, Consultant and Contractor agreements pursuant to Section 3.1.15; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 13.2.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 13.2.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

§ 13.2.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner. The obligation for such payments shall survive termination of the Contract and are expressly included in the performance of the Work covered by the Design-Builder's performance bond.

§ 13.2.3 Suspension by the Owner for Convenience

§ 13.2.3.1 The Owner may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 13.2.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 13.2.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 13.2.4 Termination by the Owner for Convenience

§ 13.2.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 13.2.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and,
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Project agreements, including agreements with the Architect, Consultants, Contractors, and purchase orders, and enter into no further Project agreements and purchase orders.

§ 13.2.4.3 In case of such termination for the Owner's convenience, the Design-Builder shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination.

ARTICLE 14 CLAIMS AND DISPUTE RESOLUTION

§ 14.1 Claims

§ 14.1.1 **Definition.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 14.1.2 **Time Limits on Claims.** The Owner and Design-Builder shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other, arising out of or related to the Contract in accordance with the requirements of the binding dispute resolution method selected in Section 1.3, within the time period specified by law.

§ 14.1.3 Notice of Claims

§ 14.1.3.1 **Prior To Final Payment.** Prior to Final Payment, Claims by either the Owner or Design-Builder must be initiated by written notice to the other party within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 14.1.3.2 **Claims Arising After Final Payment.** After Final Payment, Claims by either the Owner or Design-Builder that have not otherwise been waived pursuant to Sections 9.10.4 or 9.10.5, must be initiated by prompt written notice to the other party. The notice requirement in Section 14.1.3.1 and the Initial Decision requirement as a condition precedent to mediation in Section 14.2.1 shall not apply.

§ 14.1.4 Continuing Contract Performance. Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 13, the Design-Builder shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

§ 14.1.5 Claims for Additional Cost. If the Design-Builder intends to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the portion of the Work that relates to the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 14.1.6 Claims for Additional Time

§ 14.1.6.1 If the Design-Builder intends to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design-Builder's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 14.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 14.1.7 Claims for Consequential Damages

The Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Design-Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work and otherwise available under this Agreement.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 13. Nothing contained in this Section 14.1.7 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Design-Build Documents.

§ 14.2 Initial Decision

§ 14.2.1 An initial decision shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder initiated prior to the date final payment is due, excluding those arising under Sections 10.3 and 10.4 of the Agreement and Sections B.3.2.9 and B.3.2.10 of Exhibit B to this Agreement, unless 30 days have passed after the Claim has been initiated with no decision having been rendered. Unless otherwise mutually agreed in writing, the Owner shall render the initial decision on Claims.

§ 14.2.2 Procedure

§ 14.2.2.1 Claims Initiated by the Owner. If the Owner initiates a Claim, the Design-Builder shall provide a written response to Owner within ten days after receipt of the notice required under Section 14.1.3.1. Thereafter, the Owner shall render an initial decision within ten days of receiving the Design-Builder's response: (1) withdrawing the Claim in whole or in part, (2) approving the Claim in whole or in part, or (3) suggesting a compromise.

§ 14.2.2.2 Claims Initiated by the Design-Builder. If the Design-Builder initiates a Claim, the Owner will take one or more of the following actions within ten days after receipt of the notice required under Section 14.1.3.1: (1) request additional supporting data, (2) render an initial decision rejecting the Claim in whole or in part, (3) render an initial decision approving the Claim, (4) suggest a compromise or (5) indicate that it is unable to render an initial decision because the Owner lacks sufficient information to evaluate the merits of the Claim.

§ 14.2.3 In evaluating Claims, the Owner may, but shall not be obligated to, consult with or seek information from persons with special knowledge or expertise who may assist the Owner in rendering a decision. The retention of such persons shall be at the Owner's expense.

§ 14.2.4 If the Owner requests the Design-Builder to provide a response to a Claim or to furnish additional supporting data, the Design-Builder shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Owner when the response or supporting data will be furnished or (3) advise the Owner that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Owner will either reject or approve the Claim in whole or in part.

§ 14.2.5 The Owner's initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) identify any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 14.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 14.2.6.1.

§ 14.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 14.2.7 In the event of a Claim against the Design-Builder, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Design-Builder's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

(Paragraph deleted)

§ 14.3 Mediation

§ 14.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 14.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 14.3.2 The parties shall endeavor to resolve their Claims by mediation. The mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ 14.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction.

(Paragraphs deleted)

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located.

§ 15.2 Successors and Assigns

§ 15.2.1 The Owner and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section 15.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 15.2.2 The Owner may, without consent of the Design-Builder, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Design-Build Documents. The Design-Builder shall execute all consents reasonably required to facilitate such assignment.

§ 15.2.3 If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute certificates, other than those required by Section 3.1.10, the Owner shall submit the proposed language of such certificates for review at least 14 days prior to the requested dates of execution. If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute consents reasonably required to facilitate assignment to a lender, the Design-Builder, Architect, Consultants, or Contractors shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to them for review at least 14 days prior to execution. The Design-Builder, Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 15.3 Written Notice

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice. Written notice may also be established by acknowledgements and responses exchanged via electronic communications such as electronic mail or any internal messaging functionality of BIM and/or project management software used by the parties for the project.

§ 15.4 Rights and Remedies

§ 15.4.1 Duties and obligations imposed by the Design-Build Documents, and rights and remedies available thereunder, shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 15.4.2 No action or failure to act by the Owner or Design-Builder shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

§ 15.5 Tests and Inspections

§ 15.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Design-Build Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Design-Builder.

§ 15.5.2 If the Owner determines that portions of the Work require additional testing, inspection or approval not included under Section 15.5.1, the Owner will instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section 15.5.3, shall be at the Owner's expense.

§ 15.5.3 If such procedures for testing, inspection or approval under Sections 15.5.1 and 15.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure shall be at the Design-Builder's expense.

§ 15.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

§ 15.5.5 If the Owner is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.

§ 15.5.6 Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 15.6 Confidential Information

If the Owner or Design-Builder transmits Confidential Information, the transmission of such Confidential Information constitutes a warranty to the party receiving such Confidential Information that the transmitting party is authorized to transmit the Confidential Information. If a party receives Confidential Information, the receiving party shall keep the Confidential Information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 15.6.1.

§ 15.6.1 A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Contract.

§ 15.7 Capitalization

Terms capitalized in the Contract include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 15.8 Interpretation

§ 15.8.1 In the interest of brevity the Design-Build Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 15.8.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

Conduct of the Architect's Principal, Employees, Agents and Representatives

The safety and security of District staff, students and the general public are of utmost priority to the District. To that end, the Architect shall be responsible for ensuring compliance by the Architect and any employees, agents or representatives of the Architect, including all Design Consultants, to the following:

- A. **No drugs, alcohol, knives, firearms or other weapons on District property, whether or not there is an existing occupied building.**
- B. **No fraternizing with, threats to, or use of abusive or profane language in the presence of students, parents, visitors, or District representatives, agents, or employees.**
- C. **No improper attire, actions or gestures while on any District property.**
No smoking on District property in conformance with Horry County Board of Education policy. Violations of such policy shall result in a civil penalty of up to \$1,000 per occurrence to the individual responsible and/or the Architect for whom the individual is a Principal, employee, agent, or representative.
- D. **Secure SLED (State Law Enforcement Division) criminal background checks on all the Architect's Principals, employees, agents, and representatives performing work on District property and contractually require the same of all Design Consultants, their employees, agents, and representatives. No employees, agents or representatives of the Architect and Design Consultants having committed violent crimes, crimes against children, or crimes of moral turpitude are allowed access to the District's premises. Such SLED criminal background checks shall be maintained on file in the offices of the respective Architect and Design Consultant and made available to appropriate District personnel or the District's legal counsel immediately upon request.**

Promotional Materials

The Design Builder shall have the right to include photographic or artistic representations of the design of the Project among the Design Builder's promotional and professional materials. The Design Builder shall be given reasonable access to the completed Project to make such representations. The District shall provide professional credit for the Architect and Design Builder in the District's promotional materials for the Project. The Architect shall not make any representations in promotional and professional

materials other than the identification of the District without the District's approval of the written copy prior to submission, printing and distribution. This condition shall survive termination or completion of this Agreement.

Drug-Free Workplace

The Architect and the Architect's Design Consultants shall be responsible for initiating, maintaining and supervising all drug-free programs in connection with the performance of this Agreement. The drug-free programs shall conform to Title 44, Chapter 107, § 44-107-10 through § 44-107-90 of the South Carolina Code of Laws as may be amended.

Right Audit Project

The District shall have the right to audit the books and records of the Architect to the extent that the books and records relate to the performance of this Agreement and shall include all pricing and Change Order (Attachment E) data. Such books and records related to the work covered under this Agreement shall be maintained by the Architect for a period of not less than three (3) years from the date of final payment to the Architect under this Agreement. This requirement shall also apply to any Design Consultants performing services under the Architect's direction.

The Office of General Services of the State of South Carolina, or any auditor under contract with the District has the right to audit the Architect's records related to any Project incorporated under this Agreement during the time frame stated in the previous paragraph. The Architect shall ensure that all records pertaining to any Project are available for inspection at the location specified by the District within seventy-two (72) hours of notification at no additional cost to the District. This requirement shall survive termination or completion of the Agreement.

Traffic Control On-Site and Off-Site: The Contractor shall conduct its operations in a manner to not interrupt pedestrian or vehicle traffic except as approved by the District and the South Carolina Department of Transportation. The worksite shall be confined to the smallest area possible allowing maximum use of streets, sidewalks, parking areas or other pedestrian areas and reduce to a minimum any hazard to traffic or pedestrians. The Contractor shall use worker and traffic control signs and devices necessary to comply with Section VI of U.S. Department of Labor, Federal Highway Administration, Manual on Uniform Traffic Control Devices for Streets and Highways (Washington, DC: GPO) as may be amended, to facilitate traffic control on public roads, streets, or highways when work performed obstructs public traffic. When such traffic areas are obstructed to any extent by work in progress, workers equipped with flags shall direct vehicle and pedestrian traffic. The workers so designated shall not be assigned any other duties while engaged in directing traffic.

Safety Designee: The Contractor shall designate a competent individual at the worksite whose duty shall be the prevention of accidents and the implementation and monitoring of all OSHA construction safety standards and requirements. The competent individual shall serve as spotter where there is exposure of pedestrians, students, parents, or visitors to falling debris and, in addition, shall ensure on a daily basis that all fencing or other safety barriers are in an upright position to prevent ingress and egress to "lay down" areas or work areas by unauthorized individuals.

Licenses and Permits: During the term of the contract, the Contractor shall be responsible for obtaining and maintaining in good standing, all licenses (including professional licenses, if any), permits, inspections and related fees for each or any such licenses, permits and/or inspections required by state, county, city or other government entity or unit to accomplish the work specified in this solicitation and the contract.

Iran Divestment Act: The Iran Divestment Act List is a list published by the [State] Board pursuant to Section 11- 57-310 that identifies persons engaged in investment activities in Iran. Currently, the list is available at the following URL: <http://procurement.sc.gov/PS/PS-irandivestment.phtml>(.) Consistent with Section 11-57-310(B), the Contractor shall not contract with any person to perform a part of the Work, if, at the time you enter into a subcontract, that person is on the then-current version of the Iran Divestment Act List

Immigrant Workers: The "South Carolina Illegal Immigration and Reform Act" requires all employers to verify the legal status of new employees and prohibits employment of any worker who is not legally in this country and

authorized to work. Effective January 1, 2012, all South Carolina employers are required to enroll in the U.S. Department of Homeland Security's E-Verify program and verify the status of new employees within three business days, using E-Verify. Failure to use E-Verify to verify new hires will result in probation for the employer or suspension/revocation of the employer's business licenses.

SC IMMIGRATION LAW. S.C. Code § 8-14-40 Compliance: Design-Builder certifies that the Design-Builder will comply with the requirements of S.C. Code § 8-14-10 *et seq.* and agrees to provide to the Owner any documentation required to establish either: (a) the applicability of that chapter to the contractor, subcontractor, and sub-subcontractor; or (b) the compliance with this that chapter by the contractor and any subcontractor or sub-subcontractor.

Business license, insurance, and bonds must be obtained prior to issuance of a Notice to Proceed. Failure to obtain these within thirty (30) days of execution of the agreement makes this Agreement voidable at the option of the Owner.

ARTICLE 16 SCOPE OF THE AGREEMENT

§ 16.1 This Agreement is comprised of the following documents listed below:

- .1 AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder
- .2 AIA Document A141™-2014, Exhibit A, Design-Build Amendment, if executed
- .3 AIA Document A141™-2014, Exhibit B, Insurance and Bonds
- .4

(Paragraphs deleted)

Design-Builder's Proposal as accepted by the Owner.

This Agreement entered into as of the day and year first written above.

OWNER (Signature)

John K. Gardner, Chief Financial Officer
(Printed name and title)

DESIGN-BUILDER (Signature)

Robert Ferris, Authorized Member
(Printed name and title)

Additions and Deletions Report for AIA® Document A141™ – 2014

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PAGE 1

AGREEMENT made as of the 19th day of November in the year two thousand fifteen (2015).

...

Horry County Schools, South Carolina, a political subdivision of the State of South Carolina.
335 Four Mile Rd | PO Box 260005
Conway, SC 29528
District Office Phone 843.488.6700

...

FIRSTFLOOR ENERGY POSITIVE LLC.
333 Fayetteville St., Suite 225
Raleigh, NC 27601

...

New Carolina Forest Middle School
(per Owner's Request for Proposals No. 1415-91)

PAGE 2

C — SUSTAINABLE PROJECTS

...

Per "Design Requirements" published for Solicitation No. 1415-91.

PAGE 3

Per "Design Requirements" published for Solicitation No. 1415-91.

...

Per "Design Requirements" published for Solicitation No. 1415-91.

...

Per "Design Requirements" published for Solicitation No. 1415-91.

§ 1.1.5 Incentive programs the Owner intends to pursue for the Project, including those related to the Sustainable Objective, and any deadlines for receiving the incentives that are dependent on, or related to, the Design-Builder's services, are as follows:

(Identify incentive programs the Owner intends to pursue for the Project and deadlines for submitting or applying for the incentive programs.)

Number not used.

...

Per "Design Requirements" published for Solicitation No. 1415-91 as amended through the Board of Education's action November 2, 2015.

§ 1.1.7 The Owner's design and construction milestone dates:

.1 — Design phase milestone dates:

.2 — Submission of Design-Builder Proposal:

.3 — Phased completion dates:

.4 — Substantial Completion date:

.5 — Other milestone dates:

Per "Design Requirements" published for Solicitation No. 1415-91

...

(List name, legal status, address and other information.)

...

SFL+A Architects, P.A. 333 Fayetteville Street Suite 225, Raleigh, NC 27601.

...

Per Design-Builder's Proposal to Owner pursuant to Solicitation No.1415-91.

...

Per Design-Builder's Proposal to Owner pursuant to Solicitation No.1415-91.

...

Per "Design Requirements" published for Solicitation No. 1415-91 (Summary of Services Required, Article 3).

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(List name, address and other information.)

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Executive Director of Facilities (or a designee identified in writing by the owner.)
Horry County Schools
Facilities Department, 1160 E Highway 50
Conway, SC 29526
843.488.6965

...

N/A

...

Functional Performance Consultant (TBD)

...

Robbie Ferris, S.C. AR.6106
FIRSTFLOOR ENERGY POSITIVE LLC,
333 Fayetteville St., Suite 225, Raleigh, NC 27601
919-573-6350

...

(Check the appropriate box. If the Owner and Design Builder do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

☐ Arbitration pursuant to Section 14.4

☒ Litigation in a court of competent jurisdiction

☐ Other: (Specify)
jurisdiction, nonjury before a circuit judge in Horry County, SC.

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§ 1.4.7 Owner. The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative. The Owner may have employees that are design professionals or otherwise skilled in construction or construction management, and such employees may, from time to time, perform various tasks or duties for or on behalf of the Owner under this Agreement. However, it is specifically understood that the Owner (including these agents and employees) has no obligation or duty to apply specialty or professional knowledge and skill, and shall not be held to have undertaken to provide or perform any aspect of the Owner's performance of this Agreement as a design professional or specially skilled and knowledgeable construction industry member or construction manager, and this principle applies regardless of the Owner's position titles or office division titles as may be applicable to such employees.

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The Design-Build may invoice the Design-Build may invoice the owner for not more than five hundred thousand dollars (\$500,000) for its Work performed prior to the execution of the Design-Build Amendment. This amount is within and part of the price agreed in the Design-Build Amendment.

§ 2.1.2 The hourly billing rates for services of the Design Builder and the Design Builder's Architect, Consultants and Contractors, if any, are set forth below.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

§ 2.1 number not used]

Individual or Position

Rate

§ 2.1.3 Compensation for Reimbursable Expenses Prior To Execution of Design-Build Amendment

§ 2.1.3.1 Reimbursable Expenses are in addition to compensation set forth in Section 2.1.1 and 2.1.2 and include expenses, directly related to the Project, incurred by the Design-Builder and the Design-Builder's Architect, Consultants, and Contractors, as follows:

- .1 Transportation and authorized out of town travel and subsistence;
- .2 Dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 All taxes levied on professional services and on reimbursable expenses; and
- .9 Other Project related expenditures, if authorized in advance by the Owner.

§ 2.1.3.2 For Reimbursable Expenses, the compensation shall be the expenses the Design-Builder and the Design-Builder's Architect, Consultants and Contractors incurred, plus an administrative fee of _____ percent (____ %) of the expenses incurred.

§ 2.1.4.1 Payments are due and payable upon presentation of the Design-Builder's invoice. Amounts unpaid Forty-five (45) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Design-Builder. (Insert rate of monthly or annual interest agreed upon.) at the rate of 5% p.a.

____ %

N/A

§ 2.1.4.2 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times for a period of two years following execution of the Design-Build Amendment or termination of this Agreement, whichever occurs first.

...

Building Permit and Other Permits and Fees: No general building permit is required in accordance with § 6-9-110 of the South Carolina Code of Laws; however, the Contractor shall be required to provide mechanical, electrical, plumbing and other such permits which may be required for purposes of inspection at no additional cost to the District. Except for permits and fees which are the responsibility of the Contractor in the Contract Documents, the District shall secure and pay for necessary approvals, easements, assessments, utility impact fees, permits, and such charges required for the successful completion of the work.

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§ 3.1.6 When the Owner's Design Requirements or applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals. The Owner understands and agrees that the services of the Design-Builder's Architect and the Design-Builder's other Consultants are performed in the sole interest of, and for the exclusive benefit of, the Design-Builder.

...

The Office of School Facilities (OSF) shall determine the enforcement and interpretation of all the applicable codes and referenced standards on state buildings, including the District's school facilities.

§ 3.1.8.1 The Design-Build shall keep the Owner informed of the progress and quality of the Work. ~~On a monthly basis, or otherwise as agreed to by the Owner and Design-Build, As stated in the Design Requirements, the Design-Build shall submit written progress reports to the Owner, reports, photographs of Work in progress, and other data to the Owner electronically, or through the Owner's option, project management software, showing estimated percentages of completion and other information identified below:~~

...

- .12 ~~Additional information as agreed to by the Owner and Design-Build, designated by the Owner through its project management software data requirements.~~

~~§ 3.1.8.2 In addition, where the Contract Sum is the Cost of the Work with or without a Guaranteed Maximum Price, the Design-Build shall include the following additional information in its progress reports:~~

- ~~.1 Design-Build's work force report;
.2 Equipment utilization report; and
.3 Cost summary, comparing actual costs to updated cost estimates.~~

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§ 3.1.10 ~~Certifications. Upon the Owner's written request, the Design-Build shall obtain from Design-Build~~ shall include in each Application for Payment a certification from each of the Architect, Consultants, and Contractors, and furnish to the Owner, ~~these~~ certifications with respect to the documents and services provided by the Architect, Consultants, and Contractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Design-Build's Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

...

§ 3.1.11.3 The Design-Build shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Owner or its designee has approved the respective Submittal.

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[Numbers §4.2 & §4.3 intentionally not used]

~~§ 4.1.2 The Design-Build shall advise the Owner on proposed site use and improvements, selection of materials, and building systems and equipment. The Design-Build shall also provide the Owner with recommendations, consistent with the Owner's Criteria, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life cycle data, and possible cost reductions.~~

~~§ 4.2 Evaluation of the Owner's Criteria~~

~~§ 4.2.1 The Design-Build shall schedule and conduct meetings with the Owner and any other necessary individuals or entities to discuss and review the Owner's Criteria as set forth in Section 1.1. The Design-Build shall thereafter again meet with the Owner to discuss a preliminary evaluation of the Owner's Criteria. The preliminary evaluation shall address possible alternative approaches to design and construction of the Project and include the Design-Build's recommendations, if any, with regard to accelerated or fast track scheduling, procurement, or phased construction. The preliminary evaluation shall consider cost information, constructability, and procurement and construction scheduling issues.~~

§ 4.2.2 After the Design-Builder meets with the Owner and presents the preliminary evaluation, the Design-Builder shall provide a written report to the Owner, summarizing the Design-Builder's evaluation of the Owner's Criteria. The report shall also include

- .1 — allocations of program functions, detailing each function and their square foot areas;
- .2 — a preliminary estimate of the Cost of the Work, and, if necessary, recommendations to adjust the Owner's Criteria to conform to the Owner's budget;
- .3 — a preliminary schedule, which shall include proposed design milestones; dates for receiving additional information from, or for work to be completed by, the Owner; anticipated date for the Design-Builder's Proposal; and dates of periodic design review sessions with the Owner; and
- .4 — the following:
(List additional information, if any, to be included in the Design-Builder's written report.)

§ 4.2.3 The Owner shall review the Design-Builder's written report and, if acceptable, provide the Design-Builder with written consent to proceed to the development of the Preliminary Design as described in Section 4.3. The consent to proceed shall not be understood to modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.3 Preliminary Design

§ 4.3.1 Upon the Owner's issuance of a written consent to proceed under Section 4.2.3, the Design-Builder shall prepare and submit a Preliminary Design to the Owner. The Preliminary Design shall include a report identifying any deviations from the Owner's Criteria, and shall include the following:

- .1 — Confirmation of the allocations of program functions;
- .2 — Site plan;
- .3 — Building plans, sections and elevations;
- .4 — Structural system;
- .5 — Selections of major building systems, including but not limited to mechanical, electrical and plumbing systems; and
- .6 — Outline specifications or sufficient drawing notes describing construction materials.

The Preliminary Design may include some combination of physical study models, perspective sketches, or digital modeling.

§ 4.3.2 The Owner shall review the Preliminary Design and, if acceptable, provide the Design-Builder with written consent to proceed to development of the Design-Builder's Proposal. The Preliminary Design shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.4 Design-Builder's Proposal

§ 4.4 Design-Builder's Construction Proposal

§ 4.4.1 Upon the Owner's issuance of a written consent to proceed under Section 4.3.2, the Design-Builder shall prepare and submit the Design-Builder's Proposal to the Owner. The Design-Builder's ~~The Design-Builder's~~ Construction Proposal shall include the following:

- .1 A list of the Preliminary Design documents and other information, including the Design-Builder's clarifications, assumptions and deviations from the Owner's Criteria, ~~the Owner's original Design Requirements and the Design-Builder's original Proposal Development Documents as proposed in the Owner's procurement leading to this Agreement, upon which the Design-Builder's Proposal is based;~~
- .2 The proposed Contract Sum, including the compensation method and, if based upon the Cost of the Work plus a fee, a written statement of estimated cost organized by trade categories, allowances, contingencies, Design-Builder's Fee, and other items that comprise the Contract Sum; ~~method;~~
- .3 The proposed date the Design-Builder shall achieve Substantial Completion; ~~Completion (or phased beneficial occupancy, if applicable and acceptable to the Owner);~~

...

- .6 The date on which the Design-Builder's Construction Proposal expires.

§ 4.4.2 Submission of the Design-Builder's Construction Proposal shall constitute a representation by the Design-Builder that it has visited the site and become familiar with local conditions under which the Work is to be completed.

§ 5.1.2.1 The Design-Builder shall submit three copies of all Construction Documents prepared and submitted to Regulatory Agencies as a portion of the permitting and approval process for this work.

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Maintenance of Record Drawings: The Contractor shall maintain at the worksite one (1) record copy of the Contract Documents including approved changes in good order and marked currently to record changes and selections made during performance of the work. A copy of submittals accepted by the District shall also be maintained at the worksite. These items shall be available to the Architect and District when present at the worksite. When required by the Contract Documents, the Contractor shall provide record drawings on all increments of the work such as, by way of illustration and not limitation, plumbing, electrical, mechanical, and all systems, such as fire and security systems, incorporated into the work. The Contractor shall furnish an electronic and paper copy of record drawings of "as-built" detail to the Architect at final completion of all work, excluding punch list items as required by the Contract Documents.

Professional Certifications: When professional certification of performance criteria for materials, systems, or equipment is required by the Contract Documents, the District shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

Contractor's Quality Control Program: The Contractor shall institute and maintain throughout the contract term a quality control program, designed to ensure the work performed is in accordance with the Contract Documents, including any changes, at all times and in all respects. The program shall include providing daily supervision and conducting frequent inspections by the Worksite Superintendent(s).

1. **Compliance with Employment Laws:** By entering into a Contract Agreement, the Contractor agrees to abide by all applicable laws pertaining to employment including, by way of illustration and not limitation, the following:

- A. Title VII of the Civil Rights Act of 1964, as may be amended.
- B. Age Discrimination in Employment Act of 1964, as may be amended.
- C. Title I of the Americans Disabilities Act of 1990, as may be amended.
- D. Equal Pay Act of 1963, as may be amended.
- E. Fair Labor Standards Act, as may be amended.
- F. South Carolina Wages Act, Code 37-10-10 et seq., as may be amended.
- G. South Carolina Worker's Compensation Act, Code 42-1-10 et seq., as may be amended.

The Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, handicap, or national origin except when such condition is a bona fide occupational qualification reasonably necessary for normal operations of the Contractor. The Contractor, in all solicitations or advertisements for employees, shall state the Contractor is an "Equal Opportunity Employer." The Contractor agrees to post in conspicuous places, visible to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause and shall include the provision of this paragraph in every subcontract or purchase agreement of more than \$10,000.

Employment Taxes and Benefits: The District shall not withhold from the contract payments any Federal or State income taxes, or any employment-related taxes normally withheld on the District's employees. Further, the District shall not provide any employment related insurances or other benefits such as worker's compensation for the benefit of any Contractor, subcontractor or supplier employees.

Project Key Staff – Project Manager: The Contractor shall assign a skilled, experienced, and dedicated Project Manager to the project and identified in Exhibit A. The Project Manager shall secure the materials of proper quality and quantity to meet the Contract Documents and manage the appropriate timing of all materials, sub-contracted work, and Contractor provided labor to ensure the continual progress of the work to meet the substantial completion date. The Contractor shall not change the Project Manager identified in the *Scope of Work (Exhibit A)* or the duties and status of the Project Manager during the course of the project without approval of the District.

Project Key Staff -- Worksite Superintendent(s): The Contractor shall employ at least one (1) full-time, competent Worksite Superintendent and, if required by the Contract Documents, an additional part-time or full-time, competent secondary Worksite Superintendent if expedient for the size and scope of the project. Exhibit A identifies the Worksite Superintendent(s). No less than one (1) Worksite Superintendent shall be in attendance at the worksite at all times during performance of any work by the Contractor's own forces or subcontractors and during delivery of any materials. The Worksite Superintendent shall not perform the work of any trade or other duties; however, the secondary Worksite Superintendent may perform part-time work of a trade or the duties of OSHA Compliance Officer or fireguard, if approved by the District. The Contractor shall not change any Worksite Superintendent identified in the *Scope of Work (Exhibit A)* or the duties or status of same during the course of the project without approval of the District. The Worksite Superintendent(s) shall enforce strict discipline and good order among the Contractor's representatives, agents, employees, subcontractors and suppliers.

Worksite Communications: The Project Manager and Worksite Superintendent(s) are representatives of the Design Builder and communications given to them, either orally or in writing, shall be as binding as if given to the Principal of the Design Builder.

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§ 5.5.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall secure and pay for the building permit as well as any other permits, fees, licenses, and inspections by government agencies, necessary for proper execution of the Work and Substantial Completion of the Project.

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§ 5.7.2 If the Design-Builder ~~changes-desires to change~~ any of the personnel, Contractors or suppliers identified in the Design-Build Amendment, including but not limited to any contractor or design professional identified by the Design-Builder in its Request for Qualifications response, the Design-Builder shall notify the Owner and provide the name and qualifications of the proposed new personnel, design professional, Contractor or supplier. The Owner may reply within 14 days to the Design-Builder in writing, stating (1) whether the Owner has reasonable objection to the proposed new personnel, design professional, Contractor or supplier or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

...

§ 5.7.3.1 If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection. ~~If the rejected person or entity was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute person or entity's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Design-Builder has acted promptly and responsively in submitting names as required.~~

...

~~The~~ In addition to any Owner requirements to keep electronic project data up to date, the Design-Builder shall maintain at the site for the Owner one copy of the Design-Build Documents and a current set of the Construction

Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals. The Design-Builder shall deliver these items to the Owner in accordance with Section 9.10.2 as a record of the Work as constructed.

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§ 5.14.3 The Design-Builder shall reimburse the Owner and other contractor(s) for costs the Owner incurs that are payable to a separate contractor and other contractor(s), respectively, incur because of the Design-Builder's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Design-Builder for costs the Design-Builder incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

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- .5 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; provided that costs of premiums, permits, and taxes that are based on marginal additions to an existing sum or quantity may all be reasonably estimated subject to correction at the time of Final Payment or other agreed time when the actual costs of the marginal additions can be determined or mutually agreed upon; and
- .6 Additional costs of supervision and field office personnel directly attributable to the change.

Allowable Overhead and Profit Charges: Additional overhead and profit attributable to the change in contract pricing shall not exceed the following:

- A. For work performed by the Contractor's own forces, a maximum of ten percent (10%) of the allowable direct costs or the unit pricing negotiated at the time of award.
- B. For work performed by a subcontractor's own forces, a maximum of ten percent (10%) of the allowable direct costs.
- C. For work performed by a subcontractor, overhead and profit of a maximum of five percent (5%) is allowable by the Contractor for administration of the sub-contract.

Retainage: The District requires a retainage of three and one-half percent (3.5%) of the total contract price, as may be amended by any approved *Change Order*, to be withheld from the Contractor's payments throughout the term of the *Contract Agreement* and payable at the time of final payment after a) full completion of all work to be performed and all requirements established in the *Contract Agreement* and acceptance by the District, b) submittal of all closeout documents, and c) submittal of an affidavit of payment of debts/claims, if requested by the District, for every subcontractor who performed work on the project evidencing they have received final payment of undisputed work and retainage withheld. As a condition of the contract, no more than three and one-half percent (3.5%) shall be retained from the progress payments of any subcontractor by the Contractor until final completion of that portion of the work. Prompt payment of retainage to all subcontractors at final completion of their acceptable work regardless of timing during the contract is mandatory. The Contractor shall, at final completion, ensure no amount of the Contractor's retained funds is allocable to the completed and accepted work of any subcontractor nor to materials or equipment purchased from any supplier unless such amounts are in dispute and the Contractor has not requested payment for such disputed amounts to date. Such amounts in dispute shall be identified on the Contractor's affidavit of payment of debts/claims submitted with final documents.

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§ 7.1.2 The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's schedule agreed to by the Owner. The Owner shall furnish to the Design-Builder, within 15 days after receipt of a written request, information necessary and relevant for the Design-Builder to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein. The Owner shall give notices of project commencement and take other action to protect the integrity and exclusivity of the project payment bond(s).

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§ 7.2.4 The Owner shall cooperate with the Design-Builder in securing building-land development, zoning, and other permits, licenses and inspections.

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§ 7.3.2 Upon review of the Submittals required by the Design-Build Documents, the Owner or its designee shall notify the Design-Builder of any non-conformance with the Design-Build Documents the Owner discovers.

...

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner. For Work on the critical path to beneficial occupancy of the Project (or defined component thereof) the ten-day period referenced herein is reduced to five (5) days during the 60 days prior to substantial completion as shown on the last schedule properly submitted under § 3.1.9.

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§ 8.1.4 LIQUIDATED DAMAGES FOR LATE SUBSTANTIAL AND FINAL COMPLETION OF THE WORK.

The Owner and the Contractor agree that time is of the essence and that the Owner will suffer significant damage, hardship, and loss if the Work is not substantially completed within the Contract Time. Damages the Owner will incur as a result of breach of contract by failure to achieve substantial completion are: use of relocatable classrooms; use of alternate sites for the educational program; disruption of class locations; disruption of athletic program; disruption of public service activities planned for the project; loss of rental of the project; security risks due to comingling of project workers with additional persons on and near the site; additional safety risks of equipment, vehicles, and unfinished work on the campus during the academic term; general disruption of the teaching and learning process due to project activities during the academic term; moving equipment during the academic term when students and full staff are present; harm to the Owner's reputation and established goodwill among the community, parents, students, and staff due to late delivery of the project; loss of student morale and academic performance due to the ongoing Work during the academic term; harm to the Owner's public relations; disruption and inefficiency of the management of all the Owner's facilities and other current construction projects. The measurement of such damages is difficult. Accordingly, such damages are converted to Liquidated Damages as follows: for each day the Work is not Substantially Complete beyond the Contract Time allowed for Substantial Completion, liquidated damages of \$1000 will be due from the Design-Builder to the Owner; for each day the Work is not Finally Complete beyond the Contract Time allowed for Final Completion, liquidated damages of \$500 will be due from the Design-Builder to the Owner.

...

~~§ 8.2.3 This Section 8.2 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents.~~

§ 8.2.3 Weather Delays: When adverse weather conditions are the basis for a request for additional time, such request shall be documented by data substantiating the weather conditions a) were abnormal for a period of time which could not have been reasonably anticipated; b) had an adverse effect on the work scheduled, and alternate work unaffected by the weather could not have been done; and c) had an adverse effect on the construction schedule such that the loss of work time will adversely impact the established completion date. The Contractor must make every effort to mitigate the potential effect of the weather on the construction schedule including, but not limited to, rescheduling of subcontractors, pumping water from work areas, rescheduling work hours to alternate work days within the work week, or other such actions. Such time extension request shall be in writing and submitted to the District for approval within ten (10) days from the end of the event causing the impact on the construction schedule.

An extension of time not requested within the appropriate time period shall not be considered. The approved extension of time shall be incorporated in the next Change Order.

§ 8.2.4 Anticipated Weather Delays: A total of five (5) days per calendar month (non-cumulative) shall be anticipated by the Contractor as "adverse weather," and such time shall not be considered justification for an extension of time. Such anticipated adverse weather days are established only for normally scheduled work days, excluding Saturdays, Sundays and major holidays, unless such adverse weather conditions on those days are severe enough to impact the scheduled work on the following work day. If adverse weather days beyond the five (5) days anticipated are substantiated and the Contractor could not mitigate the impact of the additional adverse weather days, an extension of time may be allowed only to the extent of the actual impact on the last approved construction schedule and only to the extent of one (1) full day of extended time for each full working day of adverse weather conditions which prevented a forty-hour work week within a seven (7) day calendar week. A request for adverse weather extension shall not be allowed after the date established for substantial completion.

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The Owner shall, within ~~seven~~ twenty-one days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a Certificate for Payment indicating the amount the Owner determines is properly due, and notify the Design-Builder in writing of the Owner's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

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.7 repeated or substantial failure to carry out the Work in accordance with the Design-Build Documents.

...

§ 9.6.4 The Owner has the right to request written evidence from the Design-Builder that the Design-Builder has properly paid the Architect, Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, amounts paid by the Owner to the Design-Builder for the Work. If the Design-Builder fails to furnish such evidence within seven days, the Owner shall have the right to contact the Architect, Consultants, and Contractors to ascertain whether they have been properly paid. The Owner shall have no obligation to pay or to see to the payment of money to a Consultant or Contractor, except as may otherwise be required by law. Contractor.

...

§ 9.6.7 Unless the Design-Builder provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Design-Builder for Work properly performed by the Architect, Consultants, Contractors and other person or entity providing services or work for the Design-Builder, shall be held by the Design-Builder for the Architect and those Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Design-Builder, shall create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust or shall entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision.

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§ 9.8.2 When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the Owner an occupancy permit issued by the South Carolina Office of School Facilities and a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Design-Build Documents.

...

§ 9.8.5 When the Work or designated portion thereof is substantially complete, the Design-Builder will prepare for the Owner's signature an occupancy permit issued by the South Carolina Office of School Facilities and a Certificate of Substantial Completion that shall, upon the Owner's signature, establish the date of Substantial Completion; establish responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Design-Builder shall finish all items on the list accompanying the Certificate. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

PAGE 24

- .2 failure of the Work to comply with the requirements of the Design-Build Documents; or
- .3 terms of special warranties required by the Design-Build Documents;
- .4 post-occupancy services to be provided by or through the Design-Builder.

PAGE 26

§ 11.2.1 Before or After Substantial Completion. The Design-Builder shall promptly correct Work either rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected or nonconforming Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for any design consultant employed by the Owner whose expenses and compensation were made necessary thereby, shall be at the Design-Builder's expense.

PAGE 27

§ 11.2.2.1 In addition to the Design-Builder's obligations under Section 3.1.12, if, within one-year-two years after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found not to be in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year-two-year period for correction of the Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.9.

§ 11.2.2.2 The one-year-two-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 11.2.2.3 The one-year-two-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section 11.2.

...

§ 11.2.5 Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder has under the Design-Build Documents. Establishment of the one-year-two-year period for correction of Work as described in Section 11.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

...

If the Owner prefers to accept Work that is not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made. Acceptance of Nonconforming Work may only be evidenced by written agreement specifying the nonconformity and the Owner's informed consent to accept it. Nonconforming Work shall not become accepted Work by inaction or implication.

PAGE 28

§ 12.3 Upon execution of the Agreement, the Design-Builder grants to the Owner a limited, irrevocable and non-exclusive license to use the Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under the Design-Build Documents. The license granted under this section permits the Owner to authorize its consultants and separate contractors to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. ~~If the Design-Builder rightfully terminates this Agreement for cause as provided in Section 13.1.4 or 13.2.1 the license granted in this Section 12.3 shall terminate.~~

§ 12.3.1 The Design-Builder shall obtain non-exclusive licenses from the Architect, Consultants, and Contractors, that will allow the Design-Builder to satisfy its obligations to the Owner under this Article 12. The Design-Builder's licenses from the Architect and its Consultants and Contractors shall also allow the Owner, in the event this Agreement is terminated for any reason ~~other than the default of the Owner or in the event the Design-Builder's Architect, Consultants, or Contractors terminate their agreements with the Design-Builder for cause,~~ to obtain a limited, irrevocable and non-exclusive license solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner (1) agrees to pay to the Architect, Consultant or Contractor all amounts due, and (2) provide the Architect, Consultant or Contractor with the Owner's written agreement to indemnify and hold harmless the Architect, Consultant or Contractor from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service.

§ 12.3.2 In the event the Owner alters the Instruments of Service without the author's written authorization or uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such uses. ~~The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service under this Section 12.3.2. The terms of this Section 12.3.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Sections 13.1.4 or 13.2.2.~~

...

§ 13.1.6 In the event of termination not the fault of the Design-Builder, the Design-Builder shall be compensated for Work performed prior to termination, ~~together with Reimbursable Expenses then due termination~~ and any other expenses directly attributable to termination for which the Design-Builder is not otherwise compensated. In no event shall the Design-Builder's compensation under this Section 13.1.6 be greater than the compensation set forth in Section 2.1.

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§ 13.2.1.3 If one of the reasons described in Section 13.2.1.1 or 13.2.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, profit on that executed Work, and costs incurred by reason of such termination, and damages, termination.

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§ 13.2.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner. The obligation for such payments shall survive termination of the ~~Contract~~ and are expressly included in the performance of the Work covered by the Design-Builder's performance bond.

...

§ 13.2.4.3 In case of such termination for the Owner's convenience, the Design-Builder shall be entitled to receive payment for Work executed, and costs incurred by reason of such ~~termination, along with reasonable overhead and profit on the Work not executed~~ termination.

...

§ 14.1.2 Time Limits on Claims. The Owner and Design-Builder shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other, arising out of or related to the Contract in accordance with the requirements of the binding dispute resolution method selected in Section 1.3, within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Design-Builder waive all claims and causes of action not commenced in accordance with this Section 14.1.2 law.

PAGE 31

- .2 damages incurred by the Design-Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the ~~Work~~ Work and otherwise available under this Agreement.

PAGE 32

~~§ 14.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.~~

...

§ 14.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this Section 14.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

...

§ 14.4 Arbitration

§ 14.4.1 If the parties have selected arbitration as the method for binding dispute resolution in Section 1.3, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The

party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 14.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations or statute of repose. For statute of limitations or statute of repose purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 14.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

§ 14.4.3 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 14.4.4 Consolidation or Joinder

§ 14.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 14.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration; provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 14.4.4.3 The Owner and Design Builder grant to any person or entity made a party to an arbitration conducted under this Section 14.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Design Builder under this Agreement.

...

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 14.4. located.

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Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice. Written notice may also be established by acknowledgements and responses exchanged via electronic communications such as electronic mail or any internal messaging functionality of BIM and/or project management software used by the parties for the project.

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Conduct of the Architect's Principal, Employees, Agents and Representatives

The safety and security of District staff, students and the general public are of utmost priority to the District. To that end, the Architect shall be responsible for ensuring compliance by the Architect and any employees, agents or representatives of the Architect, including all Design Consultants, to the following:

- A. No drugs, alcohol, knives, firearms or other weapons on District property, whether or not there is an existing occupied building.
- B. No fraternizing with, threats to, or use of abusive or profane language in the presence of students, parents, visitors, or District representatives, agents, or employees.
- C. No improper attire, actions or gestures while on any District property.
No smoking on District property in conformance with Horry County Board of Education policy. Violations of such policy shall result in a civil penalty of up to \$1,000 per occurrence to the individual responsible and/or the Architect for whom the individual is a Principal, employee, agent, or representative.
- D. Secure SLED (State Law Enforcement Division) criminal background checks on all the Architect's Principals, employees, agents, and representatives performing work on District property and contractually require the same of all Design Consultants, their employees, agents, and representatives. No employees, agents or representatives of the Architect and Design Consultants having committed violent crimes, crimes against children, or crimes of moral turpitude are allowed access to the District's premises. Such SLED criminal background checks shall be maintained on file in the offices of the respective Architect and Design Consultant and made available to appropriate District personnel or the District's legal counsel immediately upon request.

Promotional Materials

The Design Builder shall have the right to include photographic or artistic representations of the design of the Project among the Design Builder's promotional and professional materials. The Design Builder shall be given reasonable access to the completed Project to make such representations. The District shall provide professional credit for the Architect and Design Builder in the District's promotional materials for the Project. The Architect shall not make any representations in promotional and professional materials other than the identification of the District without the District's approval of the written copy prior to submission, printing and distribution. This condition shall survive termination or completion of this Agreement.

Drug-Free Workplace

The Architect and the Architect's Design Consultants shall be responsible for initiating, maintaining and supervising all drug-free programs in connection with the performance of this Agreement. The drug-free programs shall conform to Title 44, Chapter 107, § 44-107-10 through § 44-107-90 of the South Carolina Code of Laws as may be amended.

Right Audit Project

The District shall have the right to audit the books and records of the Architect to the extent that the books and records relate to the performance of this Agreement and shall include all pricing and Change Order (Attachment B) data. Such books and records related to the work covered under this Agreement shall be maintained by the Architect for a period of not less than three (3) years from the date of final payment to the Architect under this Agreement. This requirement shall also apply to any Design Consultants performing services under the Architect's direction.

The Office of General Services of the State of South Carolina, or any auditor under contract with the District has the right to audit the Architect's records related to any Project incorporated under this Agreement during the time frame stated in the previous paragraph. The Architect shall ensure that all records pertaining to any Project are available for inspection at the location specified by the District within seventy-two (72) hours of notification at no additional cost to the District. This requirement shall survive termination or completion of the Agreement.

Traffic Control On-Site and Off-Site: The Contractor shall conduct its operations in a manner to not interrupt pedestrian or vehicle traffic except as approved by the District and the South Carolina Department of Transportation. The worksite shall be confined to the smallest area possible allowing maximum use of streets, sidewalks, parking areas or other pedestrian areas and reduce to a minimum any hazard to traffic or pedestrians. The Contractor shall use worker and traffic control signs and devices necessary to comply with Section VI of U.S. Department of Labor, Federal Highway Administration, Manual on Uniform Traffic Control Devices for Streets

and Highways (Washington, DC: GPO) as may be amended, to facilitate traffic control on public roads, streets, or highways when work performed obstructs public traffic. When such traffic areas are obstructed to any extent by work in progress, workers equipped with flags shall direct vehicle and pedestrian traffic. The workers so designated shall not be assigned any other duties while engaged in directing traffic.

Safety Designee: The Contractor shall designate a competent individual at the worksite whose duty shall be the prevention of accidents and the implementation and monitoring of all OSHA construction safety standards and requirements. The competent individual shall serve as spotter where there is exposure of pedestrians, students, parents, or visitors to falling debris and, in addition, shall ensure on a daily basis that all fencing or other safety barriers are in an upright position to prevent ingress and egress to "lay down" areas or work areas by unauthorized individuals.

Licenses and Permits: During the term of the contract, the Contractor shall be responsible for obtaining and maintaining in good standing, all licenses (including professional licenses, if any), permits, inspections and related fees for each or any such licenses, permits and/or inspections required by state, county, city or other government entity or unit to accomplish the work specified in this solicitation and the contract.

Iran Divestment Act: The Iran Divestment Act List is a list published by the [State] Board pursuant to Section 11- 57-310 that identifies persons engaged in investment activities in Iran. Currently, the list is available at the following URL: <http://procurement.sc.gov/PS/PS-irandivestment.phtm>(.) Consistent with Section 11-57-310(B), the Contractor shall not contract with any person to perform a part of the Work, if, at the time you enter into a subcontract, that person is on the then-current version of the Iran Divestment Act List

Immigrant Workers: The "South Carolina Illegal Immigration and Reform Act" requires all employers to verify the legal status of new employees and prohibits employment of any worker who is not legally in this country and authorized to work. Effective January 1, 2012, all South Carolina employers are required to enroll in the U.S. Department of Homeland Security's E-Verify program and verify the status of new employees within three business days, using E-Verify. Failure to use E-Verify to verify new hires will result in probation for the employer or suspension/revocation of the employer's business licenses.

SC IMMIGRATION LAW. S.C. Code § 8-14-40 Compliance: Design-Builder certifies that the Design-Builder will comply with the requirements of S.C. Code § 8-14-10 *et seq.* and agrees to provide to the Owner any documentation required to establish either: (a) the applicability of that chapter to the contractor, subcontractor, and sub-subcontractor; or (b) the compliance with this that chapter by the contractor and any subcontractor or sub-subcontractor.

Business license, insurance, and bonds must be obtained prior to issuance of a Notice to Proceed. Failure to obtain these within thirty (30) days of execution of the agreement makes this Agreement voidable at the option of the Owner.

PAGE 36

- .4 AIA Document A141™ 2014, Exhibit C, Sustainable Projects, if completed
- .5 AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, if completed, or the following:

- .6 Other:

Design-Builder's Proposal as accepted by the Owner.

...

John K. Gardner, Chief Financial Officer

Robert Ferris, Authorized Member

Sheri L. Wainscott

From: Keith R. Powell
Sent: Tuesday, November 17, 2015 9:59 AM
To: Robbie Ferris (RFerris@sfla.biz)
Cc: William F. Halligan
Subject: RE: Hcs
Attachments: 673449 EX A.docx

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Ex A attached. Not confirmed by owner yet.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

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-----Original Message-----

From: Keith R. Powell
Sent: Tuesday, November 17, 2015 9:59 AM
To: Robbie Ferris (RFerris@sfla.biz)
Cc: William F. Halligan
Subject: RE: Hcs

141 checked draft attached. Not confirmed by owner yet.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

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-----Original Message-----

From: Keith R. Powell
Sent: Tuesday, November 17, 2015 9:48 AM
To: Robbie Ferris (RFerris@sfla.biz); Mark Wolfe; Ara Heinz (AHeinz@horrycountyschools.net); John Gardner; Kenneth Generette; rmxey@horrycountyschools.net
Cc: William F. Halligan
Subject: RE: Hcs

Robbie & HCS folks:

Ex B updated draft attached for review & comment. Waiting on HCS comments on 141 and Ex A.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

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> On Nov 17, 2015, at 7:43 AM, Robbie Ferris <RFerris@sfla.biz> wrote:

>

> Keith

> Can you send the latest version of the contract for review Robbie

>

> Sent from my iPhone

DRAFT AIA Document A141™ - 2014

Exhibit A

Design-Build Amendment

This Amendment is incorporated into the accompanying AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder dated the « » day of « » in the year « » (the "Agreement")
(In words, indicate day, month and year.)

for the following PROJECT:
(Name and location or address)

New Carolina Forest Middle School per Owner's Request for Proposals No. 1415-91 and the Design-Builder's proposal to the Owner pursuant to Owner's Solicitation No. 1415-91

THE OWNER:
(Name, legal status and address)

Horry County Schools, South Carolina, a political subdivision of the State of South Carolina.
335 Four Mile Rd.
Conway, SC 29528

THE DESIGN-BUILDER:
(Name, legal status and address)

FIRSTFLOOR ENERGY POSITIVE LLC,
333 Fayetteville St., Suite 225
Raleigh, NC 27601

The Owner and Design-Builder hereby amend the Agreement as follows.

TABLE OF ARTICLES

- A.1 CONTRACT SUM
- A.2 CONTRACT TIME
- A.3 INFORMATION UPON WHICH AMENDMENT IS BASED
- A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS
- A.5 COST OF THE WORK

ARTICLE A.1 CONTRACT SUM

§ A.1.1 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Contract after the execution of this Amendment. The Contract Sum shall be one of the following and shall not include compensation the Owner paid the Design-Builder for Work performed prior to execution of this Amendment:

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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(Check the appropriate box.)

[☒] Stipulated Sum, in accordance with Section A.1.2 below

§ A.1.2 Stipulated Sum

§ A.1.2.1 The Stipulated Sum shall be «forty-five million nine hundred thirty thousand two hundred twenty-seven dollars (\$45,930,227.00), subject to authorized adjustments as provided in the Design-Build Documents.

§ A.1.5 Payments

§ A.1.5.1 Progress Payments

§ A.1.5.1.1 Based upon Applications for Payment submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

§ A.1.5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

§ A.1.5.1.3 Provided that an Application for Payment is received not later than the « » day of the month, the Owner shall make payment of the certified amount to the Design-Builder not later than the « » day of the « » month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than « » (« ») days after the Owner receives the Application for Payment.
(Federal, state or local laws may require payment within a certain period of time.)

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§ A.1.5.1.5 With each Application for Payment the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services, if any, shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ A.1.5.1.6 In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections A.1.5.1.4 or A.1.5.1.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ A.1.5.1.7 Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ A.1.5.2 Progress Payments—Stipulated Sum

§ A.1.5.2.1 Applications for Payment where the Contract Sum is based upon a Stipulated Sum shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ A.1.5.2.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

1. Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of «three and one-half » percent («3.5 » %) on the Work. Pending final determination of cost to the Owner of Changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement;

- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of «three and one-half» percent («3.5» %);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, the Owner has withheld or nullified, as provided in Section 9.5 of the Agreement.

§ A.1.5.2.3 The progress payment amount determined in accordance with Section A.1.5.2.2 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Owner shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
(Section 9.8.6 of the Agreement discusses release of applicable retainage upon Substantial Completion of Work.)
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Design-Builder, any additional amounts payable in accordance with Section 9.10.3 of the Agreement.

§ A.1.5.5 Final Payment

§ A.1.5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder not later than 30 days after the Design-Builder has fully performed the Contract and the requirements of Section 9.10 of the Agreement have been satisfied, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements which extend beyond final payment.

ARTICLE A.2 CONTRACT TIME

§ A.2.1 Contract Time, as defined in the Agreement at Section 1.4.13, is the period of time, including authorized adjustments, for Substantial Completion of the Work.

§ A.2.2 The Design-Builder shall achieve Substantial Completion of the Work as follows:

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

« Five Hundred Sixty-Six (566) calendar days from the issuance of a Notice to Proceed. »

, subject to adjustments of the Contract Time as provided in the Design-Build Documents.

(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)

«Liquidated damages per A141-2014. »

ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

§ A.3.1 The Contract Sum and Contract Time set forth in this Amendment are based on the Owner's Design Requirements (including addenda to the RFP) and the Design-Builder's proposal to the Owner pursuant to Owner's Solicitation No. 1415-91.:

§ A.3.1.5 Allowances and Contingencies:

(Identify any agreed upon allowances and contingencies, including a statement of their basis.)

.1 Allowances

Owner Furniture Allowance \$ 1,500,000

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User Notes:

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Owner Hardware Allowance \$ 350,000
 Owner Controls Allowance \$ 650,000
 Owner Fire Alarm Allowance \$ 750,000
 Owner Special Inspections All \$ 150,000
 Owner Commissioning Allowance \$ 125,000
 Owner Technology Allowance \$ 1,865,000
 Owner Landscaping Allowance \$200,000

[NOTE: THESE NEED TO BE CHECKED / CORRELATED WITH HCS ALLOWANCES]

2 Contingencies

Owner contingency is currently Not in Contract and amounts will be determined by Modification.

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§ A.3.1.6 Design-Builder's assumptions and clarifications:

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«As stated in Design-Builder's Proposal accepted by the Owner. »

ARTICLE A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS

§ A.4.1 The Design-Builder's key personnel are identified below: (Identify name, title and contact information.)

Formatted: Not Highlight

Carolina Forest Middle School:
 Superintendent: Mark Branch
 Project Manager: Charlie Rollins
 Assistant Superintendent: Gary Pipkin

§ A.4.2 The Design-Builder shall retain the following Consultants, Contractors and suppliers, identified below: (List name, discipline, address and other information.)

Formatted: Not Highlight

SFL+ Architects: Architect, Raleigh NC
 Metcon/TA Loving joint venture: General Contractor, Pembroke NC

ARTICLE A.5 COST OF THE WORK

§ A.5.4 Other Agreements

§ A.5.4.2 Agreements between the Design-Builder and Contractors shall conform to the applicable payment provisions of the Design-Build Documents.

§ A.5.4.3 The agreements between the Design-Builder and Architect and other Consultants identified in the Agreement shall be in writing. These agreements shall be promptly provided to the Owner upon the Owner's written request.

§ A.5.5 Accounting Records

The Design-Builder shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under the Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Design-Builder's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Contractor's proposals, purchase orders, vouchers, memoranda and other data relating to the Contract. The Design-Builder shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

§ A.5.6 Relationship of the Parties

The Design-Build accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to exercise the Design-Build's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests.

This Amendment to the Agreement entered into as of the day and year first written above.

OWNER (Signature)

«John Gardner, Chief Financial Officer »« »

(Printed name and title)

DESIGN-BUILDER (Signature)

Robert Ferris, Authorized Member« »« »

(Printed name and title)

LEADER

Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Tuesday, November 17, 2015 12:22 PM
To: Keith R. Powell
Cc: Clark, Brad (Brad.Clark@BBandT.com)
Subject: FW: HCS | Exhibit B
Attachments: EX B v2 - Working Draft - (1).BBT Comments.docx

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Keith,
Apparently our insurance company sent me an email about this a few days ago that I never sent you.
Sorry!!
Feel free to call Brad directly to discuss his concerns.
Robbie

Robbie/Mike,

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Brad Clark, CIC
Vice President
BB&T Insurance Services
4309 Emperor Blvd., Suite 300
Durham, NC 27703
919.281.4545 Direct
678.612.7403 Cell

brad.clark@bbandt.com
mailcode: 120-80-01-15

From: Peeples, Kenneth
Sent: November 17, 2015 10:30 AM
To: Blanchard, Kathy; Clark, Brad
Subject: Fwd: Hcs

Ken Peeples
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Cc: "William F. Halligan" <bhalligan@childs-halligan.net>
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Robbie & HCS folks:

Ex B updated draft attached for review & comment. Waiting on HCS comments on 141 and Ex A.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina

www.childs-halligan.com

(803) 254-4035

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DRAFT AIA Document A141™ - 2014

Exhibit B

Insurance and Bonds

for the following PROJECT:
(Name and location or address)

New Carolina Forest Middle School
(per Owner's Request for Proposals No. 1415-91 and Design-Builder's Proposal in response to the solicitation.)

THE OWNER:
(Name, legal status and address)

Horry County Schools, South Carolina, a political subdivision of the State of South Carolina.
335 Four Mile Rd.
Conway, SC 29528

THE DESIGN-BUILDER:
(Name, legal status and address)

FIRSTFLOOR ENERGY POSITIVE LLC,
333 Fayetteville St., Suite 225
Raleigh, NC 27601

THE AGREEMENT

This Insurance Exhibit is part of the accompanying agreement for the Project, between the Owner and the Design-Builder (hereinafter, the Agreement), dated the « nineteenth » day of « November » in the year two thousand fifteen (2015).

(In words, indicate day, month and year.)

TABLE OF ARTICLES

- B.1 GENERAL
- B.2 DESIGN BUILDER'S INSURANCE AND BONDS
- B.3 OWNER'S INSURANCE
- B.4 SPECIAL TERMS AND CONDITIONS

ARTICLE B.1 GENERAL

The Owner and Design-Builder shall purchase and maintain insurance and provide bonds as set forth in this Exhibit B. Where a provision in this Exhibit conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Exhibit will prevail.

ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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ARTICLE B.2 DESIGN BUILDER'S INSURANCE AND BONDS

§ B.2.1 The Design-Builder shall purchase and maintain the following types and limits of insurance from a company or companies lawfully authorized to do business in the jurisdiction where the Project is located. The Design-Builder shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 11.2.2.1 of the Agreement.

§ B.2.1.1 Commercial General Liability with policy limits of not less than «two million » (\$ «2,000,000 ») for each occurrence and « five million » (\$ «5,000,000.00 ») in the aggregate providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury;
- .3 damages because of injury to or destruction of tangible property, and must contain the subcontractor exception to the "your work" exclusion;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 contractual liability applicable to the Design-Builder's obligations under Section 3.1.14 of the Agreement.

§ B.2.1.2 Automobile Liability covering vehicles owned by the Design-Builder and non-owned vehicles used by the Design-Builder with policy limits of not less than «one million » (\$ «1,000,000 ») per claim and «one million » (\$ «\$1,000,000.00 ») in the aggregate for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles specified in this Section B.2.1.2, along with any other statutorily required automobile coverage.

§ B.2.1.3 The Design-Builder may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess liability insurance, provided such primary and excess insurance policies result in the same or greater coverage as those required under Sections B.2.1.1 and B.2.1.2.

§ B.2.1.4 Workers' Compensation at statutory limits.

§ B.2.1.5 Employers' Liability with policy limits as provided below:

«\$100,000 per accident.»

§ B.2.1.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than «two million » (\$ «2,000,000 ») per claim and «two million » (\$ «2,000,000 ») in the aggregate.

§ B.2.1.8 The Design-Builder shall provide written notification to the Owner of the cancellation or expiration of any insurance required by this Article B.2. The Design-Builder shall provide such written notice within five (5) business days of the date the Design-Builder is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

§ B.2.1.9 Additional Insured Obligations. The Owner and its consultants and contractors shall be additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, Automobile Liability and Pollution Liability. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations. The policy limits applicable to the additional insureds shall be the same amount applicable to the named insured or, if the policy provides otherwise, policy limits not less than the amounts required under this Agreement.

§ B.2.1.10 Certificates of Insurance. The Design-Builder shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.2: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 of the Agreement and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section B.2.1. The certificates will show the Owner and its consultants and contractors as additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, Automobile Liability, and Pollution

ATA Document A141™ - 2014 Exhibit B. Copyright © 2004 and 2014 by The American Institute of Architects. All rights reserved. WARNING: This ATA Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this ATA Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This draft was produced by ATA software at 14:06:17 on 11/16/2015 under Order No.0239586208_1 which expires on 07/14/2016, and is not for resale. (1282172226)

Liability. Information concerning reduction of coverage on account of revised limits, claims paid under the General Aggregate or both, shall be furnished by the Design-Builder with reasonable promptness.

§ B.2.2 Performance Bond and Payment Bond

The Design-Builder shall provide surety bonds as follows:
(Specify type and penal sum of bonds.)

Type	Penal Sum (\$0.00)
A312 Performance Bond and A312 Payment Bond. The performance bond, may, but is not required to secure the professional liability of design professionals to the extent such liability is covered by the design professional's professional liability insurance.	100% of contract value.

§ B.2.2.1 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Design-Builder shall promptly furnish a copy of the bonds or shall permit a copy to be made.

ARTICLE B.3 OWNER'S INSURANCE

§ B.3.1 Owner's Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ B.3.2 Property Insurance

§ B.3.2.1 Unless otherwise provided, at the time of execution of the Design-Build Amendment, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction where the Project is located, property insurance written on South Carolina Insurance Reserve Form PD-23. The Builder's Risk policy shall include the Design-Builder and subcontractors of all tiers as Named Insured and include coverage for delay in completion, construction forms and scaffolding, expediting expenses, and testing. Unless the parties agree otherwise, upon issuance of a Certificate of Substantial Completion, the Owner shall replace the insurance policy required under this Section B.3.2 with another property insurance policy written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 11.2.2 of the Agreement.

§ B.3.2.1.2 If the For the insurance required under Section B.3.2.1 requires deductibles, the Owner shall pay costs not covered because of such deductibles, inadequate limits, excluded perils, and excluded property.

§ B.3.2.1.3 The insurance required under Section B.3.2.1 shall cover materials that will become a permanent part of the structure while stored off the site and while in transit, portions of the Work stored off the site, and also portions of the Work in transit.

§ B.3.2.1.4 Partial occupancy or use in accordance with Section 9.9 of the Agreement shall not commence until the insurance company or companies providing the insurance required under Section B.3.2.1 have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Design-Builder shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ B.3.2.2 Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance in the form of S.C. Insurance Reserve Fund ("IRF") PD-01, PD-09, and PD-12.

§ B.3.2.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section B.3.2.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

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B.3.2.5.1 The Owner and Design-Builder waive all rights against each other, the Architect, separate contractors, and all other subcontractors for loss or damage to the extent covered and paid for by Builder's Risk or any other property or equipment insurance except such rights as they may have to the proceeds of such insurance.

§ B.3.2.6 Before an exposure to loss may occur, the Owner shall file with the Design-Builder a copy of each policy that includes insurance coverages required by this Section B.3.2. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. The Owner shall provide written notification to the Design-Builder of the cancellation or expiration of any insurance required by this Article B.3. The Owner shall provide such written notice within five (5) business days of the date the Owner is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

§ B.3.2.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section B.3.2.10. The Design-Builder shall pay the Architect, Consultants and Contractors their just shares of insurance proceeds received by the Design-Builder, and by appropriate agreements, written where legally required for validity, the Design-Builder shall require the Architect, Consultants and Contractors to make payments to their consultants and subcontractors in similar manner.

§ B.3.2.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Design-Builder. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Design-Builder after notification of a Change in the Work in accordance with Article 6 of the Agreement.

§ B.3.2.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of a loss to the Owner's exercise of this power. If an objection is made, the dispute shall be resolved in the manner selected by the Owner and Design-Builder as the method of binding dispute resolution in the Agreement.

Sheri L. Wainscott

From: Keith R. Powell
Sent: Tuesday, November 17, 2015 1:11 PM
To: Robbie Ferris
Cc: Clark, Brad (Brad.Clark@BBandT.com)
Subject: RE: HCS | Exhibit B

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

The Insurance Reserve Fund builder's risk form has been a problem for years and their oddities have driven nearly every issue you spotted. That is why we listed the form instead of committing to the coverages. I have several e-mails from August when HCS tried to work with IRF on this but didn't make any headway. I will go back and look again for what might be possible.

Pollution is coming out.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

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Subject: RE: HCS | Exhibit B
Attachments: Boiler & Machinery coverage.pdf; Builder's Risk policy info.pdf

Follow Up Flag: Follow up
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Categories: Red Category

Here are the forms. The BR policy talks about "your" property, but the IRF won't let HCS name a nongovernment entity as an insured or loss payee.

Keith R. Powell
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<KGenerette@horrycountyschools.net>, "rmaxey@horrycountyschools.net"
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On Nov 17, 2015, at 7:43 AM, Robbie Ferris <RFerris@sfla.biz> wrote:

Keith

Can you send the latest version of the contract for review

Robbie

Sent from my iPhone

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SOUTH CAROLINA BUDGET AND CONTROL BOARD

INSURANCE RESERVE FUND
POST OFFICE BOX 11066
COLUMBIA, SOUTH CAROLINA 29211

Phone: (803) 737-0020

POLICY NUMBER	FROM	POLICY PERIOD	TO	TYPE OF INSURANCE	DATE PRINTED
150260016A	05/10/2015	05/10/2016		BUILDING AND PERSONAL PROPERTY	04 MAY 2015

COVERAGE PROVIDED UNDER THIS POLICY PART IS SUBJECT TO THE FOLLOWING FORMS:

PD-01 PD-03 PD-04 PD-05 PD-08 PD-09 PD-10 PD-11 PD-12 PD-15 PD-27

NAMED INSURED AND ADDRESS	CONTACT PERSON AND PHONE	FORM #	PAGE
HORRY COUNTY SCHOOL DISTRICT PO BOX 260005 CONWAY, SC 29528-6005	DARLYN ADAMS (843)488-6942		20 OF 73
	TYPE OF ACTIVITY		ACTIVITY #
	*** RENEWAL DECLARATION ***		001

1 OF 34

EFFECTIVE 12:01 AM STANDARD TIME AT YOUR MAILING ADDRESS SHOWN ABOVE

COVERED CAUSES OF LOSS:

SPECIAL FORM EARTHQUAKE FORM FLOOD INSURANCE

BOILER AND MACHINERY COVERAGE FORM:

IN RETURN FOR THE PAYMENT OF PREMIUM AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY WHILE THE OBJECT IS IN USE OR CONNECTED READY FOR USE AT ANY LOCATION.

LIMIT OF INSURANCE \$5,000,000 PER ACCIDENT

PREMIUM INCLUDED

FORMS APPLICABLE TO BOILER AND MACHINERY COVERAGE: PD-01, PD-09, PD-12

ORDINANCE AND LAW:

LIMIT OF INSURANCE \$100,000

OPTIONAL COVERAGES APPLICABLE ONLY WHEN ENTRIES ARE IN THE BRACKETS BELOW:

REPLACEMENT COST BUILDINGS (X)

REPLACEMENT COST PERSONAL PROPERTY ... (X)

DEDUCTIBLES:

COVERED LOSS \$1,000

EARTHQUAKE: SPECIAL 5% DEDUCTIBLE. THIS POLICY CONTAINS A SEPARATE DEDUCTIBLE FOR EARTHQUAKE LOSSES.

COINSURANCE 80%

SEGMENT NUMBER	PROPERTY DESCRIPTION/LOCATION		LIMIT OF INSURANCE	RATE	PREMIUM
✓20	MAINTENANCE WAREHOUSE	BLDG	10,000	0.180	18.00
	WOOD POLE W/ANTENNA (100 FT)	CONT	0	0.217	.00
✓30	MAINTENANCE WAREHOUSE	BLDG	12,000	0.115	13.80
	FUEL PUMP	CONT	0	0.076	.00
✓40	MAINTENANCE WAREHOUSE	BLDG	3,000	0.115	3.45
	32 FUEL PUMP CANOPY	CONT	0	0.076	.00
✓60	MAINTENANCE WAREHOUSE	BLDG	8,000	0.537	42.96
	TRANSFORMER BLDG.	CONT	5,000	0.537	26.85
✓80	MAINTENANCE WAREHOUSE	BLDG	778,851	0.242	1,884.82
	BUILDING A	CONT	143,800	0.326	468.79



STATE FISCAL ACCOUNTABILITY AUTHORITY

INSURANCE RESERVE FUND
POST OFFICE BOX 11066
COLUMBIA, SOUTH CAROLINA 29211

Phone: (803) 737-0020

COMMON POLICY CONDITIONS

All Coverage Parts included in this policy are subject to the following conditions.

A. Cancellation and Non-Renewal

1. The first Named Insured shown in the Declaration may cancel this policy by mailing to the Insurance Reserve Fund a 90 day written advance notice stating when thereafter the cancellation shall be effective. A political subdivision may cancel all policies with the Insurance Reserve Fund by mailing to the Fund a 90 day written advance notice as provided in §15-78-140 of the South Carolina Code of Laws.
2. The Insurance Reserve Fund may cancel this policy for nonpayment of premium by mailing a notice of cancellation giving not less than 30 days notice of the cancellation as provided in §15-78-160 of the South Carolina Code of Laws.
3. If this policy is cancelled in accordance with (1) or (2) above, earned premium shall be computed in accordance with the customary short rate table and procedure. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.
4. For the purposes of this policy, the term non-renewal shall mean cancellation if the insured is ceasing all coverages with the Insurance Reserve Fund and conditions as provided in sections (1), (2) and (3) apply.

B. Changes

This policy contains all the agreements between you and us concerning the insurance afforded. The first Name Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

C. Examination of Your Books and Records

We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

D. Inspections and Surveys

We have the right but are not obligated to:

1. Make inspections and surveys at any time;
2. Give you reports on the conditions we find; and
3. Recommend changes.

Any inspections, surveys, reports or recommendations relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:

1. Are safe or healthful; or
2. Comply with laws, regulations, codes or standards.

This condition applies not only to us, but also to any rating, advisory, rate service or similar organization, which makes insurance inspections, surveys, reports or recommendations.

E. Premiums

The first named insured shown in the Declarations:

1. Is responsible for the payment of all premiums; and
2. Will be the payee for any return premiums we pay.

F. Transfer of Your Rights And Duties Under This Policy

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual named insured.

If you die, your rights will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

INSURANCE RESERVE FUND

By

Director



STATE FISCAL ACCOUNTABILITY AUTHORITY

INSURANCE RESERVE FUND
POST OFFICE BOX 11066
COLUMBIA, SOUTH CAROLINA 29211

Phone: (803) 737-0020

BOILER AND MACHINERY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the word "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the Insurance Reserve Fund.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section F. - DEFINITIONS.

A. COVERAGE

We will pay for direct damage to Covered Property caused by a Covered Cause of Loss.

1. Covered Property

Covered Property, as used in this Coverage Part, means any property that:

- You own; or
- Is in your care, custody or control and for which you are legally liable.

2. Property Not Covered

Covered Property does not include any:

- Electronic data processing, recording or storage media such as films, tapes, discs, drums or cells used in conjunction with an electronic computer or electronic data processing equipment.
- Data stored on this media; or
- Programming records used for electronic data processing or electronically controlled equipment;

whether or not the media or data is in actual use at the time of the "accident".

3. Covered Cause of Loss

A Covered Cause of Loss is an "accident" to an "object" shown in the Declarations. An "object" must be in use or connected ready for use at the location specified for it at the time of the "accident".

4. Defense

- If there is damage to property of another in your care, custody or control and for which you are legally liable, that was directly caused by an "accident" to an "object," we will have the right and duty to defend you against any "suit" alleging liability for damage to that property. However, we have no duty to defend you against any "suit" alleging liability for damage to property not covered by this Coverage Form.
- If a claim or "suit" is brought against you alleging that you are liable for damage to property of another that was caused by an "accident" to an "object", we will either:

- Settle the claim or "suit"; or
- Defend you against the "suit" but keep for ourselves the right to settle it at any point.

5. Coverage Extensions

a. Expediting Expenses

With respect to your damaged Covered Property, we will pay the reasonable extra cost to:

- Make temporary repairs;
- Expedite permanent repairs; and
- Expedite permanent replacement.

We restrict the amount payable for Expediting Expenses as explained in the Limits of Insurance section of this Coverage Form.

b. Automatic Coverage For A Newly Acquired Location

We will automatically cover an "accident" to an "object" at a newly acquired location. This automatic coverage begins at the time you acquire the property and continues for 90 days, under the following conditions:

- You must inform us, in writing, of the newly acquired location within 90 days of the date you acquire it;
- The "object" must be in use or connected ready for use at the time of acquisition and throughout the period of automatic coverage and be of a type that would be included in any "Object" Group Description shown in the Declarations;
- The Limit of Insurance and Deductible amount will be the highest amounts shown in the Declarations for the same type of "object"
- We will not be liable under this coverage for Consequential Damage, Business Interruption, or any other indirect loss resulting from an "accident" to an "object"; and
- You agree to pay an additional premium as determined by us.

c. Supplementary Payments

We will pay, with respect to any claim or any "suit" we defend:

- All expenses we incur;
- The cost of bonds to release attachments, but only for bond amounts within in the Limit of Insurance. We do not have to furnish these bonds;

- (3) All reasonable expenses incurred by you at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of the time off from work;
- (4) All costs taxed against you in any "suit" we defend;
- (5) Pre-judgment interest awarded against you on that part of the judgment we pay. If we make an offer to pay the applicable Limit of Insurance, we will not pay any pre-judgment interest based on that period of time after the offer; and
- (6) All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the Limit of Insurance shown in the Declarations.

These payments will not reduce the Limit of Insurance.

B. EXCLUSIONS

We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

1. Ordinance or Law

Any increase in loss caused by or resulting from the enforcement of any ordinance, law, regulation, rule or ruling regulating or restricting repair, replacement, alteration use, operation, construction or installation. As used here, increase in loss also includes expenses incurred beyond those for which we would have paid if no "hazardous substance" had been involved in the "accident".

2. Earth Movement

Any earth movement, including but not limited to earthquake, landslide, mudslide, subsidence or volcanic eruption.

3. Nuclear Hazard

Nuclear reaction or radiation, or radioactive contamination, however caused.

4. War and Military Action

- a. War, including undeclared or civil war;
- b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- c. Insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.

- 5. Flood, surface water, waves, tides, tidal waves, overflow of any body of water, or their spray, all whether driven by wind or not.
- 6. Lack of power, light, heat, steam or refrigeration.
- 7. An explosion. However, we will pay for direct loss or damage caused by an explosion of an "object" of a kind specified in a. through g. below, if covered

by this insurance and described on an Object Definitions endorsement that is a part of this policy, and is not otherwise excluded in this Section B.:

- a. Steam boiler;
- b. Electric steam generator;
- c. Steam piping;
- d. Steam turbine;
- e. Steam engine;
- f. Gas turbine; or
- g. Moving or rotating machinery when such explosion is caused by centrifugal force or mechanical breakdown.

- 8. Fire or explosion that occurs at the same time as an "accident" or that ensues from an "accident". With respect to any electrical equipment forming a part of an "object", this exclusion is changed to read:

Fire or explosion outside the "object" that occurs at the same time as an "accident" or ensues from an "accident".

- 9. The explosion of gas or unconsumed fuel within the furnace of any boiler or fired vessel or within the passages from that furnace to the atmosphere, whether or not the explosion is:

- a. Contributed to or aggravated by an "accident" to any part of an "object" that contains steam or water; or
- b. Caused in whole or in part by an "accident" to an "object" or part of an "object".

- 10. An "accident" that is the result of an explosion or fire.

- 11. An "accident" to any "object" while being tested.

- 12. Water or other means used to extinguish a fire, even when the attempt is unsuccessful.

- 13. An "accident" to:

- a. Electronic data processing, recording or storage media such as films, tapes, discs, drums or cells used in conjunction with an electronic computer or electronic data processing equipment.
- b. Data stored on this media; or
- c. Programming records used for electronic data processing or electronically controlled equipment;

whether or not the media or data is in actual use at the time of the "accident".

14. An "accident" that is caused by any of the following causes of loss if coverage for that cause of loss is provided by another policy of insurance you have:

- a. Aircraft or Vehicles;
- b. Lightning;
- c. Sinkhole Collapse;
- d. Smoke;
- e. Sprinkler Leakage; or
- f. Weight or Snow, Ice, or Sleet.

15. An "accident" that is caused by either of the following causes of loss:

- a. Windstorm or Hail; or
- b. Freezing; caused by cold weather.

16. A delay in, or an interruption of, any business, manufacturing or processing activity.

17. Any other indirect result of an "accident" to an "object".

C. LIMITS OF INSURANCE

- 1. We will not pay more than the applicable Limit of Insurance shown in the Declarations for all direct damage to Covered Property that results from any "one accident".
- 2. The following coverage limitations to our payment for direct damage to Covered Property are part of and not in addition to the Limit of Insurance for this Coverage Form.

a. Expediting Expenses

Our payment for Expediting Expenses will be limited to:

- (1) \$25,000; or
- (2) What is left of the Limit of Insurance after we pay your loss for Covered Property damaged by an "accident";

whichever is less.

b. Hazardous Substance Limitation

The following applies despite the operation of the Ordinance or Law Exclusion. This limitation does not apply to damage, contamination or pollution caused by ammonia.

If Covered Property is damaged, contaminated or polluted by a "hazardous substance" as a result of an "accident" to an "object", the most we will pay for any additional expenses incurred by you for clean up, repair or replacement or disposal of that property is \$25,000. As used here, additional expenses mean expenses incurred beyond those for which we would be liable if no "hazardous substance" had been involved.

c. Ammonia Contamination Limitation

If Covered Property is contaminated by ammonia as a result of an "accident" to an "object", the most we will pay for this kind of damage, including salvage expense, is \$25,000.

d. Water Damage Limitation

If Covered Property is damaged by water as a result of an "accident" to a covered refrigerating or air conditioning vessels and piping, the most we will pay for this kind of damage, including salvage expense, is \$25,000.

Any payment made under Section C will not increase if more than one insured is shown in the Declarations.

D. DEDUCTIBLE

We will not pay for loss or damage resulting from any "one accident" until the amount of loss or damage exceeds the Deductible shown in the Declarations. We will then pay the amount of loss or damage in excess of the Deductible, up to the applicable Limit of Insurance. If more than one "object" is involved in "one accident", only the highest Deductible will apply.

E. BOILER AND MACHINERY CONDITIONS

The following conditions apply in addition to the Common Policy Conditions:

1. Loss Conditions

a. Abandonment

There can be no abandonment of any property to us.

b. Appraisal

If we and you disagree on the value of the property or the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property and amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- (1) Pay its chosen appraiser; and
- (2) Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal we will still retain our right to deny the claim.

c. Duties in the Event of Loss or Damage

- (1) You must see that the following are done in the event of loss or damage:
 - (a) Give us a prompt notice of the loss or damage. Include a description of the property involved.
 - (b) As soon as possible, give us a description of how, when and where the loss or damage occurred.
 - (c) Allow us a reasonable time and opportunity to examine the property and premises before repairs are undertaken or physical evidence of the "accident" is removed. But you must take whatever measures are necessary for protection from further damage.

(d) Permit us to inspect the property and records proving the loss or damage. Also permit us to take samples of damaged property for inspection, testing and analysis.

(e) If requested, permit us to question you under oath, at such times as may be reasonably required about any matter relating to this insurance on your claim, including your books and records. In such event, your answers must be signed.

(f) Send us a signed, sworn statement of loss containing the information we request to settle the claim. You must do this within 60 days after our request.

(g) Cooperate with us in the investigation or settlement of the claim.

(2) We may examine any insured under oath, while not in the presence of any other insured and at such times as may be reasonably required, about any matter relating to this insurance or the claim, including an insured's books and records. In the event of an examination, an insured's answers must be signed.

d. Insurance Under Two or More Coverages

If two or more of this policy's coverages apply to the same loss or damage, we will not pay more than the actual amount of the loss or damage subject to the Limit of Insurance.

e. Legal Action Against Us

No one may bring a legal action against us under this Coverage Part unless:

- (1) There has been full compliance with all the terms of this Coverage Part; and
- (2) The action is brought within 2 years after the date of the "accident"; or
- (3) We agree in writing you have an obligation to pay for damage to Covered Property of others or until the amount of that obligation has been determined by final judgment or arbitration award. No one has the right under this policy to bring us into an action to determine your liability.

f. Loss Payable Clause

- (1) We will pay you and the loss payee shown in the Declarations for loss due to an "accident" to an "object", as interests may appear. The insurance covers the interests of the loss payee unless the results from conversion, secretion or embezzlement on your part.
- (2) We may cancel the policy as allowed by the Cancellation Condition. Cancellation ends this agreement as to the loss payee's interest.
- (3) If we make any payment to the loss payee, we will obtain their rights against any other property.

g. Other Insurance

(1) You may have other insurance subject to the same plan, terms, conditions and provisions as the insurance under this Coverage Part. If you do, we will pay our share of the covered loss or damage. Our share is the proportion that the applicable Limit of Insurance under this Coverage Part bears to the Limits of Insurance of all insurance covering on the same basis.

(2) If there is other insurance covering the same loss or damage, other than that described in (1) above, we will pay only the amount of covered loss or damage in excess of the amount due from that other insurance, whether you can collect on it or not.

In no case will we pay more than the applicable Limit of Insurance.

h. Privilege to Adjust With Owner

In the event of loss or damage involving property of others in your care, custody or control, we have the right to settle the loss or damage with the owner of the property. A receipt for payment from the owners of that property will satisfy any claim of yours.

i. Transfer of Rights of Recovery Against Others To Us

If any person or organization to or for whom we make payment under this Coverage Part has rights to recover damages from another, those rights are transferred to us to the extent of our payment. That person or organization must do everything necessary to secure our rights and must do nothing after loss to impair them.

j. Valuation

(1) We will pay you the amount you spend to repair or replace your property directly damaged by an "accident". Our payment will be the smallest of:

- (a) The Limit of Insurance;
 - (b) The cost at the time of the "accident" to repair the damaged property with property of like kind, capacity, size and quality;
 - (c) The cost at the time of the "accident" to replace the damaged property on the same site with other property:
 - (i) Of like kind, capacity, size and quality; and
 - (ii) Used for the same purpose;
 - (d) The amount you actually spend that is necessary to repair or replace the damaged property.
- (2) As respects any "object", if the cost of repairing or replacing only a part of the "object" is greater than:
- (a) The cost of repairing the "object"; or

- (b) The cost of replacing the entire "object" on the same site;

we will pay only the smaller of (a) or (b).

The repair parts or replacement "object" must be

- (c) Of like kind, capacity, size and quality; and

- (d) Used for the same purpose.

The cost of repair or replacement in (1) and (2) above does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property.

- (3) We will not pay you:

- (a) If the loss or damage is to property that is obsolete or useless to you; or

- (b) For any extra cost if you decide to repair or replace the damaged property with property of a better kind or quality or of larger capacity.

- (4) If you do not repair or replace the damaged property within 18 months after the date of the "accident", then we will pay only the smaller of the:

- (a) Cost it would have taken to repair; or

- (b) Actual cash value;

at the time of the "accident".

Paragraph (4) does not apply to any time period beyond the 18 months that we agree to in writing.

2. General Conditions

a. Bankruptcy

The bankruptcy or insolvency of you or your estate will not relieve us of an obligation under this Coverage Part.

b. Liberalization

If we adopt any standard form revision for general use that would broaden coverage under this Coverage Part without additional premium, the broadened coverage will immediately apply to this Coverage Part if the revision is effective within 45 days prior to or during the policy period.

c. No Benefit to Bailee

No person or organization, other than you, having custody of Covered Property, will benefit from this insurance.

d. Object Group

All "objects" in use or connected ready for use and included in an "Object" Group Definition will be considered as individually described in the Declarations. The premiums of "objects" included in an "Object" Group Description will be adjusted as follows:

- (1) We will base the initial premium for these "objects" on information we obtain. The rates charged will be those in effect on the first day of coverage.

- (2) We will charge an additional premium for "objects" that are added to the policy after the effective date of this policy. The additional premium for these "objects" will be computed pro rata.

- (3) We will allow a return premium for "objects" that are removed from the policy after the effective date of the policy. The return premium will be computed pro rata from the time the "objects" are disconnected.

e. Policy Period, Coverage Territory

Under this Coverage Part:

- (1) The "accident" must occur

- (a) During the Policy Period shown in the Declarations; and

- (b) Within the Coverage Territory.

- (2) The coverage territory is:

- (a) The United States of America; and

- (b) Puerto Rico

f. Concealment, Misrepresentation or Fraud

This Coverage Part is void in any case of fraud by you relating to it. It is also void if you intentionally conceal or misrepresent a material fact concerning:

- (1) This Coverage Part;

- (2) The Covered Property; or

- (3) Your interest in the Covered Property.

g. Suspension

Whenever an "object" is found to be in or exposed to a dangerous condition, any of our representatives may immediately suspend the insurance against loss from an "accident" to that "object". This can be done by delivering or mailing a written notice of suspension to:

- (1) Your last known address; or

- (2) The address where the object is located.

Once suspended in this way, your insurance can be reinstated only by an endorsement for that "object".

If we suspend your insurance, you will get a pro rata refund of premium for that "object". But the suspension will be effective even if we have not yet made or offered a refund.

F. DEFINITIONS

1. "Accident" means a sudden and accidental breakdown of the [object] or a part of the "object". At the time the breakdown occurs, it must manifest.

itself by physical damage to the "object" that necessitates repair or replacement.

None of the following is an "accident":

- a. Depletion, deterioration, corrosion or erosion;
- b. Wear and tear;
- c. Leakage at any valve, fitting, shaft seal, gland packing, joint or connection;
- d. Breakdown of any vacuum tube, gas tube or brush;
- e. Breakdown of any electronic computer or electronic data processing equipment.
- f. Breakdown of any structure or foundation supporting the "object" or any of its parts; or
- g. The functioning of any safety or protective device.

Turbine Units may have a separate definition of "accident". If so, refer to the Declarations for the appropriate accident definition.

If a strike, riot, civil commotion, act of sabotage or vandalism results in an "accident", this insurance applies. However, the War and Military Action Exclusion and the conditions of this Coverage Part still apply.

2. "Hazardous Substance" means a substance declared to be hazardous to health by a governmental agency.

3. "Object" means the equipment shown in the Declarations. Full description of specific "object" categories are found in the Object Definitions endorsement attached to this Coverage Form.

4. "One Accident" means:

If an initial "accident" causes other "accidents" all will be considered [one accident]. All [accidents] at any one location that manifest themselves at the same time and are the result of the same cause will be considered [one accident].

5. "Suit" means a civil proceeding and includes:

- a. An arbitration proceeding in which damages are claimed and to which you must submit or do submit with our consent; or
- b. Any other alternative dispute resolution proceeding in which damages are claimed and to which you submit with our consent.

INSURANCE RESERVE FUND

By



Director



STATE FISCAL ACCOUNTABILITY AUTHORITY

INSURANCE RESERVE FUND
POST OFFICE BOX 11066
COLUMBIA, SOUTH CAROLINA 29211

Phone: (803) 737-0020

OBJECT DEFINITIONS NO. 1, NO. 2, AND NO. 3

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

OBJECT DEFINITIONS NO. 1 - PRESSURE AND REFRIGERATION OBJECTS

This endorsement modifies insurance provided under the following:

BOILER AND MACHINERY COVERAGE FORM

1. BOILERS, FIRED VESSELS AND ELECTRIC STEAM GENERATORS

a. "Object" means:

Any boiler, fired vessel or electric steam generator shown in the Declarations and includes any:

- (1) Steel economizer used solely with them; and
- (2) Steam boiler piping, valves, fittings, traps and separators;
but only if they:
 - (a) Are on your premises or between parts of your premises; and
 - (b) Contain steam or its condensate generated in whole or in part in an "object"; and
- (3) Feed water piping between any steam boiler and a feed pump or injector.

b. "Object" does not mean:

- (1) Any part not containing steam or water;
- (2) Any boiler setting;
- (3) Any insulating or refractory material;
- (4) Any piping not containing steam or its condensate;
- (5) Any buried piping;
- (6) Piping, radiators, coils, vessels or apparatus, other than those included above;
- (7) Any reciprocating or rotating machine; or
- (8) Any electrical apparatus.

c. Any of the following vessels listed below are included within the provisions of this section when used with an "object":

- (1) Condensate return tank;
- (2) Cushion or expansion tank used with a hot water heating boiler; and
- (3) Indirect water heater tank used for hot water supply service but only if it:
 - (a) Is directly in the water circulating system of the "object" it is used with; and
 - (b) Does not form part of a storage water tank.

d. For any boiler or fired vessel, the furnace of the "object" and the gas passages from there to the atmosphere will be considered as outside the "object."

e. An "object" using a heat transfer medium other than water or steam will be covered as though the medium were water and steam.

2. UNFIRED VESSELS

a. "Object" means any unfired vessel shown in the Declarations. However, "object" does not include any:

- (1) Electric steam generator
- (2) Part of a vessel that is not under:
 - (a) Pressure of the contents of the vessel; or
 - (b) Internal vacuum;
- (3) Insulating or refractory material;
- (4) Reciprocating or rotating apparatus within or forming a part of the vessel;
- (5) Electrical apparatus within or forming a part of the vessel;
- (6) Piping leading to and from the vessel;
- (7) Buried vessels or piping;
- (8) Cylinder containing a movable plunger or piston; or
- (9) Vessel, radiator, inductor, convactor, or coil connected to or used with a refrigerating or air conditioning system.

b. We will consider that the-connected ready for use- requirement of this Coverage Form and its endorsements has been met by any "object" in this section if that "object" is:

- (1) Periodically filled, moved, emptied and refilled in the course of its normal service; and
- (2) Used for storage of gas or liquid.

3. REFRIGERATING AND AIR CONDITIONING VESSELS AND PIPING

a. "Object" means any refrigerating or air conditioning vessel and piping shown in the Declarations consisting of:

- (1) Interconnected vessels, coils and piping that contain refrigerant;

(2) Vessels heated directly or indirectly that:

- (a) Form part of an absorption type system; and
- (b) Function as a generator, refrigerator or concentrator; and

(3) Valves and fittings.

When the "object" is an absorption system, it also includes hermetic solution pumps, hermetic evaporator refrigerant pumps and purge pumps (or compressors) together with their driving electric motors.

If the Declarations show Additional Vessels and Piping Included-"object" will also include:

(4) Vessels, radiators, coils and all interconnecting piping along with their valves and fittings, that are connected to or used with the system and within which steam, water, brine, or other solution is circulated for cooling, humidity control or space heating.

When a vessel uses a heat transfer medium other than water or steam, we will consider the medium or its vapor as substitutes for the words-water or steam-as used in this section.

b. However, "object" does not include any:

- (1) Boiler;
- (2) Steam piping;
- (3) Reciprocating or rotating machine or apparatus;
- (4) Electrical apparatus except as included in paragraph (3) above;
- (5) Electronic computer or electronic data processing equipment as well as any hose, flexible device or nonmetallic pipe connected to such apparatus;
- (6) Vessel, cooling tower, reservoir or other source of supply of cooling water for a condenser or compressor as well as any water piping leading to or from such a source of supply; or
- (7) Buried vessel or piping.

4. AUXILIARY PIPING

- a. "Object" means any piping shown in the Declarations including any valve, fitting, trap or separator on the piping.

b. However, "object" does not include any:

- (1) Radiator, convactor, coil or other vessel or apparatus connected to that piping; or
- (2) Buried piping.

5. SMALL COMPRESSING AND REFRIGERATION UNITS

- a. "Object" means any small compressing or refrigeration unit shown in the Declarations (not over 15 h.p. - maximum nameplate rating).
- b. However, "object" does not include any wiring or piping leading to and from the unit.

6. AIR CONDITIONING UNITS

- a. "Object" means any air conditioning unit shown in the Declarations (not over 600,000 Btu per Hour - maximum nameplate rating) and including any:
 - (1) Interconnected vessels, radiators, inductors, convectors and coils that make use of a refrigerant, steam, water, brine or other solution and form part of the unit;
 - (2) Interconnecting piping, valves and fittings containing only a refrigerant, water, brine or other solution;
 - (3) Vessels heated directly or indirectly that:
 - (a) Form part of an absorption type unit; and
 - (b) Function as a generator, regenerator or concentrator;
 - (4) Compressors, pumps, fans and blowers used solely with the unit together with their driving electric motors; and
 - (5) Control equipment used solely with the unit.
- b. However "object" does not include any:
 - (1) Boiler;
 - (2) Steam piping;
 - (3) Vessels, cooling tower, reservoir or other source of supply of cooling water for a condenser or compressor, or water piping leading to or from such a source of supply;
 - (4) Wiring or piping leading to or from the unit; or
 - (5) Electronic computer or electronic data processing equipment.

OBJECT DEFINITIONS NO. 2 - MECHANICAL OBJECTS

This endorsement modifies insurance provided under the following:

BOILER AND MACHINERY COVERAGE FORM

1. DEEP-WELL PUMP UNITS

- a. "Object" means any deep-well pump unit shown in the Declarations including any:

b. However, "object" does not include any:

- (1) Other electrical conductor;

- (2) Electronic computer or electronic data processing equipment;
- (3) Piping leading to or from the unit;
- (4) Mechanism, appliance or shaft connected to the unit; or
- (5) Well casing.

2. MISCELLANEOUS MACHINES, GEAR WHEELS AND ENCLOSED GEAR SETS

- a. "Object" means any machine shown in the Declarations including any control apparatus mounted on that machine
- b. However, "object" does not mean any:
 - (1) Mechanism or other apparatus connected to the machine, other than control apparatus included above;
 - (2) Shaft on which a machine described as a gear wheel is mounted or the bearings on any such shaft;
 - (3) Electrical apparatus;
 - (4) Electronic computer or electronic data processing equipment unless used to govern or control the machine;
 - (5) Felt, wire, screen, die, extrusion plate, swing hammer, grinding disc, cutting blade, chain, belt, clutch plate, brake pad or any part or tool subject to frequent, periodic replacement; or
 - (6) Piping or duct leading to or from the machine.

3. ENGINES, PUMPS, COMPRESSORS, FANS AND BLOWERS

- a. "Object" means any machine shown in the Declarations including any:
 - (1) Auxiliary or control apparatus mounted on that machine or the bed or frame of that machine;
 - (2) Auxiliary electric motor or other apparatus used solely to rotate that machine for starting or maintenance purposes;

- (3) Lubricating oil pump or fuel pump and its driving electric motors if used solely for that machine; and

- (4) When the machine is a reciprocating pump or a reciprocating compressor and:

- (a) Forms an integral part of a steam engine or internal combustion engine; and
- (b) Is connected to such an engine by coupling clutch or gear set; then
- (c) "Object" also includes the driving engine and any interconnecting coupling, clutch or gear set.

- b. However, "object" does not include any:

- (1) Apparatus connected to the machine, other than auxiliary or control apparatus included under paragraph a.(1) above;
- (2) Electrical apparatus other than electric motors included under paragraphs a.(2) and (3) above;
- (3) Air tank;
- (4) Electronic computer or electronic data processing equipment;
- (5) Condenser or its adapter;
- (6) Piping or duct leading to or from the machine; or
- (7) Well casing.

4. WHEEL AND SHAFTING

"Object" means any wheel (except gear wheels) or shaft shown in the Declarations including any:

- a. Rotating part or parts of any wheel, pulley, disc or coupling excluding the shaft it is mounted on, any cutting blade; or the bearings for that shaft and
- b. Rotating shaft and its couplings and bearings.

OBJECT DEFINITIONS NO. 3 - ELECTRICAL OBJECTS

This endorsement modifies insurance provided under the following:

BOILER AND MACHINERY COVERAGE FORM

1. ROTATING ELECTRICAL MACHINES, TRANSFORMERS, AND INDUCTION FEEDER REGULATORS

- a. "Object" means any rotating electrical machine, transformer, or induction feeder regulator shown in the Declarations. For rotating electrical machine, "object" also includes any:
 - (1) Exciter that is:
 - (a) Mechanically connected to that machine; and
 - (b) Used solely for excitation of that machine;

- (2) Shaft of that machine and any gear, wheel or magnetic brake mechanism on the shaft or on the frame of that machine, if the shaft does not form an integral part of any other machine;

- (3) Continuous shaft that:

- (a) Forms an integral part of that machine; and
- (b) Also forms an integral part of another rotating electric machine including any gear, wheel or magnetic brake mechanism on the shaft or on the frame of that machine;

- (4) Shaft coupled to that machine including the couplings and bearings on it, if there is no mechanism other than a coupling on the shaft; and

- (5) Non-rotating equipment used solely to start, stop or control any motor shown in the Declarations including all electrical conductors connecting such equipment with that motor provided that control equipment does not form a part of a switchboard, cubicle or bus structure controlling any electrical machine other than the motor.

b. However, "object" does not include any:

- (1) Electrical conductor or piping leading to or from the "object;" or
(2) Electronic computer or electronic data processing equipment.

2. MISCELLANEOUS ELECTRICAL APPARATUS

a. "Object" means any electrical apparatus shown in the Declarations including any:

- (1) Rotating electrical machine used solely to operate a part of the apparatus; and
(2) Instrument transformer.

b. However, "object" does not include any:

- (1) Rotating electrical machine other than a machine included above;
(2) Transformer other than an instrument transformer included above;
(3) Induction feeder regulator;
(4) Electronic computer or electronic data processing equipment;
(5) Solid state rectifier unit;

- (6) Conduit;

- (7) Electrical conductor or piping leading to or from such apparatus; or

- (8) Cabinet or compartment in which any part of the apparatus is installed.

3. SOLID STATE RECTIFIER UNITS

a. "Object" means any solid state rectifier unit shown in the Declarations including any:

- (1) Rectifier;
(2) Transformer used solely with the unit, other than an arc-furnace transformer;
(3) Heat exchanger used solely with the unit together with its interconnected vessels, coils and piping;
(4) Cooling fan or pump and its driving electric motor if used solely with the unit; and
(5) Electrical conductors connecting parts of the unit.

b. However, "object" does not mean any:

- (1) Electrical conductor or piping leading to or from the unit;
(2) Electronic computer or electronic data processing equipment;
(3) Equipment or apparatus other than that listed in paragraphs a.(1) through (5) above; or
(4) Cabinet or compartment on or in which any part of the unit is installed.

INSURANCE RESERVE FUND

By



Director



STATE FISCAL ACCOUNTABILITY AUTHORITY

INSURANCE RESERVE FUND
POST OFFICE BOX 11066
COLUMBIA, SOUTH CAROLINA 29211

Phone: (803) 737-0020

BOILER AND MACHINERY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the word "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the Insurance Reserve Fund.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section F. - DEFINITIONS.

A. COVERAGE

We will pay for direct damage to Covered Property caused by a Covered Cause of Loss.

1. Covered Property

Covered Property, as used in this Coverage Part, means any property that:

- You own; or
- Is in your care, custody or control and for which you are legally liable.

2. Property Not Covered

Covered Property does not include any:

- Electronic data processing, recording or storage media such as films, tapes, discs, drums or cells used in conjunction with an electronic computer or electronic data processing equipment.
- Data stored on this media; or
- Programming records used for electronic data processing or electronically controlled equipment;

whether or not the media or data is in actual use at the time of the "accident".

3. Covered Cause of Loss

A Covered Cause of Loss is an "accident" to an "object" shown in the Declarations. An "object" must be in use or connected ready for use at the location specified for it at the time of the "accident".

4. Defense

- If there is damage to property of another in your care, custody or control and for which you are legally liable, that was directly caused by an "accident" to an "object," we will have the right and duty to defend you against any "suit" alleging liability for damage to that property. However, we have no duty to defend you against any "suit" alleging liability for damage to property not covered by this Coverage Form.
- If a claim or "suit" is brought against you alleging that you are liable for damage to property of another that was caused by an "accident" to an "object", we will either:

- Settle the claim or "suit"; or
- Defend you against the "suit" but keep for ourselves the right to settle it at any point.

5. Coverage Extensions

a. Expediting Expenses

With respect to your damaged Covered Property, we will pay the reasonable extra cost to:

- Make temporary repairs;
- Expedite permanent repairs; and
- Expedite permanent replacement.

We restrict the amount payable for Expediting Expenses as explained in the Limits of Insurance section of this Coverage Form.

b. Automatic Coverage For A Newly Acquired Location

We will automatically cover an "accident" to an "object" at a newly acquired location. This automatic coverage begins at the time you acquire the property and continues for 90 days, under the following conditions:

- You must inform us, in writing, of the newly acquired location within 90 days of the date you acquire it;
- The "object" must be in use or connected ready for use at the time of acquisition and throughout the period of automatic coverage and be of a type that would be included in any "Object" Group Description shown in the Declarations;
- The Limit of Insurance and Deductible amount will be the highest amounts shown in the Declarations for the same type of "object"
- We will not be liable under this coverage for Consequential Damage, Business Interruption, or any other indirect loss resulting from an "accident" to an "object"; and
- You agree to pay an additional premium as determined by us.

c. Supplementary Payments

We will pay, with respect to any claim or any "suit" we defend:

- All expenses we incur;
- The cost of bonds to release attachments, but only for bond amounts within in the Limit of Insurance. We do not have to furnish these bonds;

- (3) All reasonable expenses incurred by you at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of the time off from work;
- (4) All costs taxed against you in any "suit" we defend;
- (5) Pre-judgment interest awarded against you on that part of the judgment we pay. If we make an offer to pay the applicable Limit of Insurance, we will not pay any pre-judgment interest based on that period of time after the offer; and
- (6) All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the Limit of Insurance shown in the Declarations.

These payments will not reduce the Limit of Insurance.

B. EXCLUSIONS

We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

1. Ordinance or Law

Any increase in loss caused by or resulting from the enforcement of any ordinance, law, regulation, rule or ruling regulating or restricting repair, replacement, alteration use, operation, construction or installation. As used here, increase in loss also includes expenses incurred beyond those for which we would have paid if no "hazardous substance" had been involved in the "accident".

2. Earth Movement

Any earth movement, including but not limited to earthquake, landslide, mudslide, subsidence or volcanic eruption.

3. Nuclear Hazard

Nuclear reaction or radiation, or radioactive contamination, however caused.

4. War and Military Action

- a. War, including undeclared or civil war;
- b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- c. Insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.

5. Flood, surface water, waves, tides, tidal waves, overflow of any body of water, or their spray, all whether driven by wind or not.

6. Lack of power, light, heat, steam or refrigeration.

7. An explosion. However, we will pay for direct loss or damage caused by an explosion of an "object" of a kind specified in a. through g. below, if covered

by this insurance and described on an Object Definitions endorsement that is a part of this policy, and is not otherwise excluded in this Section B.:

- a. Steam boiler;
- b. Electric steam generator;
- c. Steam piping;
- d. Steam turbine;
- e. Steam engine;
- f. Gas turbine; or
- g. Moving or rotating machinery when such explosion is caused by centrifugal force or mechanical breakdown.

8. Fire or explosion that occurs at the same time as an "accident" or that ensues from an "accident". With respect to any electrical equipment forming a part of an "object", this exclusion is changed to read:

Fire or explosion outside the "object" that occurs at the same time as an "accident" or ensues from an "accident".

9. The explosion of gas or unconsumed fuel within the furnace of any boiler or fired vessel or within the passages from that furnace to the atmosphere, whether or not the explosion is:

- a. Contributed to or aggravated by an "accident" to any part of an "object" that contains steam or water; or
- b. Caused in whole or in part by an "accident" to an "object" or part of an "object".

10. An "accident" that is the result of an explosion or fire.

11. An "accident" to any "object" while being tested.

12. Water or other means used to extinguish a fire, even when the attempt is unsuccessful.

13. An "accident" to:

- a. Electronic data processing, recording or storage media such as films, tapes, discs, drums or cells used in conjunction with an electronic computer or electronic data processing equipment.
- b. Data stored on this media; or
- c. Programming records used for electronic data processing or electronically controlled equipment;

whether or not the media or data is in actual use at the time of the "accident".

14. An "accident" that is caused by any of the following causes of loss if coverage for that cause of loss is provided by another policy of insurance you have:

- a. Aircraft or Vehicles;
- b. Lightning;
- c. Sinkhole Collapse;
- d. Smoke;
- e. Sprinkler Leakage; or
- f. Weight or Snow, Ice, or Sleet.

15. An "accident" that is caused by either of the following causes of loss:

- a. Windstorm or Hail; or
- b. Freezing, caused by cold weather.

16. A delay in, or an interruption of, any business, manufacturing or processing activity.

17. Any other indirect result of an (accident) to an "object".

C. LIMITS OF INSURANCE

1. We will not pay more than the applicable Limit of Insurance shown in the Declarations for all direct damage to Covered Property that results from any "one accident".

2. The following coverage limitations to our payment for direct damage to Covered Property are part of and not in addition to the Limit of Insurance for this Coverage Form.

a. Expediting Expenses

Our payment for Expediting Expenses will be limited to:

- (1) \$25,000; or
- (2) What is left of the Limit of Insurance after we pay your loss for Covered Property damaged by an "accident";

whichever is less.

b. Hazardous Substance Limitation

The following applies despite the operation of the Ordinance or Law Exclusion. This limitation does not apply to damage, contamination or pollution caused by ammonia.

If Covered Property is damaged, contaminated or polluted by a "hazardous substance" as a result of an "accident" to an "object", the most we will pay for any additional expenses incurred by you for clean up, repair or replacement or disposal of that property is \$25,000. As used here, additional expenses mean expenses incurred beyond those for which we would be liable if no "hazardous substance" had been involved.

c. Ammonia Contamination Limitation

If Covered Property is contaminated by ammonia as a result of an "accident" to an "object", the most we will pay for this kind of damage, including salvage expense, is \$25,000.

d. Water Damage Limitation

If Covered Property is damaged by water as a result of an "accident" to a covered refrigerating or air conditioning vessels and piping, the most we will pay for this kind of damage, including salvage expense, is \$25,000.

Any payment made under Section C will not increase if more than one insured is shown in the Declarations.

D. DEDUCTIBLE

We will not pay for loss or damage resulting from any "one accident" until the amount of loss or damage exceeds the Deductible shown in the Declarations. We will then pay the amount of loss or damage in excess of the Deductible, up to the applicable Limit of Insurance. If more than one "object" is involved in "one accident", only the highest Deductible will apply.

E. BOILER AND MACHINERY CONDITIONS

The following conditions apply in addition to the Common Policy Conditions:

1. Loss Conditions

a. Abandonment

There can be no abandonment of any property to us.

b. Appraisal

If we and you disagree on the value of the property or the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property and amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- (1) Pay its chosen appraiser; and
- (2) Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal we will still retain our right to deny the claim.

c. Duties In the Event of Loss or Damage

(1) You must see that the following are done in the event of loss or damage:

- (a) Give us a prompt notice of the loss or damage. Include a description of the property involved.
- (b) As soon as possible, give us a description of how, when and where the loss or damage occurred.
- (c) Allow us a reasonable time and opportunity to examine the property and premises before repairs are undertaken or physical evidence of the "accident" is removed. But you must take whatever measures are necessary for protection from further damage.

(d) Permit us to inspect the property and records proving the loss or damage. Also permit us to take samples of damaged property for inspection, testing and analysis.

(e) If requested, permit us to question you under oath, at such times as may be reasonably required about any matter relating to this insurance on your claim, including your books and records. In such event, your answers must be signed.

(f) Send us a signed, sworn statement of loss containing the information we request to settle the claim. You must do this within 60 days after our request.

(g) Cooperate with us in the investigation or settlement of the claim.

(2) We may examine any insured under oath, while not in the presence of any other insured and at such times as may be reasonably required, about any matter relating to this insurance or the claim, including an insured's books and records. In the event of an examination, an insured's answers must be signed.

d. Insurance Under Two or More Coverages

If two or more of this policy's coverages apply to the same loss or damage, we will not pay more than the actual amount of the loss or damage subject to the Limit of Insurance.

e. Legal Action Against Us

No one may bring a legal action against us under this Coverage Part unless:

- (1) There has been full compliance with all the terms of this Coverage Part; and
- (2) The action is brought within 2 years after the date of the "accident"; or
- (3) We agree in writing you have an obligation to pay for damage to Covered Property of others or until the amount of that obligation has been determined by final judgment or arbitration award. No one has the right under this policy to bring us into an action to determine your liability.

f. Loss Payable Clause

- (1) We will pay you and the loss payee shown in the Declarations for loss due to an "accident" to an "object", as interests may appear. The insurance covers the interests of the loss payee unless the results from conversion, secretion or embezzlement on your part.
- (2) We may cancel the policy as allowed by the Cancellation Condition. Cancellation ends this agreement as to the loss payee's interest.
- (3) If we make any payment to the loss payee, we will obtain their rights against any other property.

g. Other Insurance

- (1) You may have other insurance subject to the same plan, terms, conditions and provisions as the insurance under this Coverage Part. If you do, we will pay our share of the covered loss or damage. Our share is the proportion that the applicable Limit of Insurance under this Coverage Part bears to the Limits of Insurance of all insurance covering on the same basis.
- (2) If there is other insurance covering the same loss or damage, other than that described in (1) above, we will pay only the amount of covered loss or damage in excess of the amount due from that other insurance, whether you can collect on it or not.

In no case will we pay more than the applicable Limit of Insurance.

h. Privilege to Adjust With Owner

In the event of loss or damage involving property of others in your care, custody or control, we have the right to settle the loss or damage with the owner of the property. A receipt for payment from the owners of that property will satisfy any claim of yours.

i. Transfer of Rights of Recovery Against Others To Us

If any person or organization to or for whom we make payment under this Coverage Part has rights to recover damages from another, those rights are transferred to us to the extent of our payment. That person or organization must do everything necessary to secure our rights and must do nothing after loss to impair them.

j. Valuation

- (1) We will pay you the amount you spend to repair or replace your property directly damaged by an "accident". Our payment will be the smallest of:
 - (a) The Limit of Insurance;
 - (b) The cost at the time of the "accident" to repair the damaged property with property of like kind, capacity, size and quality;
 - (c) The cost at the time of the "accident" to replace the damaged property on the same site with other property:
 - (i) Of like kind, capacity, size and quality; and
 - (ii) Used for the same purpose;
 - (d) The amount you actually spend that is necessary to repair or replace the damaged property.
- (2) As respects any "object", if the cost of repairing or replacing only a part of the "object" is greater than:
 - (a) The cost of repairing the "object"; or

- (b) The cost of replacing the entire "object" on the same site;

we will pay only the smaller of (a) or (b).

The repair parts or replacement "object" must be

- (c) Of like kind, capacity, size and quality; and
(d) Used for the same purpose.

The cost of repair or replacement in (1) and (2) above does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property.

- (3) We will not pay you:

- (a) If the loss or damage is to property that is obsolete or useless to you; or
(b) For any extra cost if you decide to repair or replace the damaged property with property of a better kind or quality or of larger capacity.
(4) If you do not repair or replace the damaged property within 18 months after the date of the "accident", then we will pay only the smaller of the:
(a) Cost it would have taken to repair; or
(b) Actual cash value;
at the time of the "accident".

Paragraph (4) does not apply to any time period beyond the 18 months that we agree to in writing.

2. General Conditions

a. Bankruptcy

The bankruptcy or insolvency of you or your estate will not relieve us of an obligation under this Coverage Part.

b. Liberalization

If we adopt any standard form revision for general use that would broaden coverage under this Coverage Part without additional premium, the broadened coverage will immediately apply to this Coverage Part if the revision is effective within 45 days prior to or during the policy period.

c. No Benefit to Bailee

No person or organization, other than you, having custody of Covered Property, will benefit from this insurance.

d. Object Group

All "objects" in use or connected ready for use and included in an "Object" Group Definition will be considered as individually described in the Declarations. The premiums of "objects" included in an "Object" Group Description will be adjusted as follows:

- (1) We will base the initial premium for these "objects" on information we obtain. The rates charged will be those in effect on the first day of coverage.
(2) We will charge an additional premium for "objects" that are added to the policy after the effective date of this policy. The additional premium for these "objects" will be computed pro rata.
(3) We will allow a return premium for "objects" that are removed from the policy after the effective date of the policy. The return premium will be computed pro rata from the time the "objects" are disconnected.

e. Policy Period, Coverage Territory

Under this Coverage Part:

- (1) The "accident" must occur
(a) During the Policy Period shown in the Declarations; and
(b) Within the Coverage Territory.
(2) The coverage territory is:
(a) The United States of America; and
(b) Puerto Rico

f. Concealment, Misrepresentation or Fraud

This Coverage Part is void in any case of fraud by you relating to it. It is also void if you intentionally conceal or misrepresent a material fact concerning:

- (1) This Coverage Part;
(2) The Covered Property; or
(3) Your interest in the Covered Property.

g. Suspension

Whenever an "object" is found to be in or exposed to a dangerous condition, any of our representatives may immediately suspend the insurance against loss from an "accident" to that "object". This can be done by delivering or mailing a written notice of suspension to:

- (1) Your last known address; or
(2) The address where the object is located.

Once suspended in this way, your insurance can be reinstated only by an endorsement for that "object".

If we suspend your insurance, you will get a pro rata refund of premium for that "object". But the suspension will be effective even if we have not yet made or offered a refund.

F. DEFINITIONS

1. "Accident" means a sudden and accidental breakdown of the [object] or a part of the "object". At the time the breakdown occurs, it must manifest.

itself by physical damage to the "object" that necessitates repair or replacement.

None of the following is an "accident":

- a. Depletion, deterioration, corrosion or erosion;
- b. Wear and tear;
- c. Leakage at any valve, fitting, shaft seal, gland packing, joint or connection;
- d. Breakdown of any vacuum tube, gas tube or brush;
- e. Breakdown of any electronic computer or electronic data processing equipment.
- f. Breakdown of any structure or foundation supporting the "object" or any of its parts; or
- g. The functioning of any safety or protective device.

Turbine Units may have a separate definition of "accident". If so, refer to the Declarations for the appropriate accident definition.

If a strike, riot, civil commotion, act of sabotage or vandalism results in an "accident", this insurance applies. However, the War and Military Action Exclusion and the conditions of this Coverage Part still apply.

2. "Hazardous Substance" means a substance declared to be hazardous to health by a governmental agency.

3. "Object" means the equipment shown in the Declarations. Full description of specific "object" categories are found in the Object Definitions endorsement attached to this Coverage Form.

4. "One Accident" means:

If an initial "accident" causes other "accidents" all will be considered [one accident]. All [accidents] at any one location that manifest themselves at the same time and are the result of the same cause will be considered [one accident].

5. "Suit" means a civil proceeding and includes:

- a. An arbitration proceeding in which damages are claimed and to which you must submit or do submit with our consent; or
- b. Any other alternative dispute resolution proceeding in which damages are claimed and to which you submit with our consent.

INSURANCE RESERVE FUND

By



Director

- i. "Business income" means net income that would have been earned or incurred or continuing normal operating expenses.
- ii. "Extra expense" means the additional expenses that are necessary to avoid or minimize the interruption of business.

b. ADDITIONAL COVERAGES INCLUDE:

"Civil authority" applies to the extra expense caused by a civil authority prohibiting access to the damaged property.

"Alterations and new buildings" applies to new structures or alterations and begins on the date that operations would have begun except for the occurrence of the loss.

"Extended business income" applies to additional loss of business income after property is actually repaired and operations are resumed, until the business can be restored, with reasonable speed, to the condition that would have existed had no loss occurred.

6. BUILDER'S RISK (Form PD23 01-91)

- a. COVERAGE: The Fund will pay for direct physical loss of or damage to covered property unless excluded or limited. Coverage is written on a replacement cost basis with a 100% coinsurance clause. A standard \$1,000 deductible applies to each occurrence.

- i. "Covered property" includes the structure under construction, foundations, and, if intended to become a permanent part of the structure, fixtures, machinery, equipment, building materials and supplies within 100 feet of the premises.
- ii. "Property not covered" includes land, lawns, trees, shrubs and plants, radio and television antennas, and signs not attached to buildings.

b. ADDITIONAL COVERAGES INCLUDE:

"Debris removal" applies to the expenses incurred in cleaning up covered property after a covered cause of loss, up to 25% of the direct physical loss.

"Preservation of property" applies to property moved from an insured location for protection from loss by a covered peril.

"Fire department service charge" applies to service charges assessed by a fire department, up to \$1,000.

"Pollutant clean up and removal" applies to expenses incurred to extract pollutants from land or water at a covered location, if the discharge is caused by or results from a covered cause of loss, up to \$10,000.



STATE FISCAL ACCOUNTABILITY AUTHORITY

INSURANCE RESERVE FUND
POST OFFICE BOX 11066
COLUMBIA, SOUTH CAROLINA 29211

Phone: (803) 737-0020

BUILDERS RISK COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy, the words, "you" and "your" refer to Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the Insurance Reserve Fund.

Other words and phrases that appear in quotation marks have special meaning. Refer to SECTION G - DEFINITIONS.

A. COVERAGE

We will pay for direct physical loss or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.

1. Covered Property

Covered Property, as used in this Coverage Part, means the following type of property for which a Limit of Insurance is shown in the Declarations:

Building Under Construction, meaning the building or structure described in the Declarations while in the course of construction, including:

- a. Foundations;
- b. If intended to become a permanent part of the building or structure described in the Declarations, the following property located in or on the building or structure or within 100 feet of its premises:
 - (1) Fixtures, machinery and equipment used to service the building; and
 - (2) Your building materials and supplies used for construction;
- c. If not covered by other insurance, temporary structures built or assembled on site, including cribbing, scaffolding and construction forms.

2. Property Not Covered

Covered Property does not include:

- a. Land (including land on which the property is located) or water;
- b. The following property when outside of buildings:
 - (1) Lawns, trees, shrubs or plants;
 - (2) Radio or television antennas, including their lead-in wiring, masts or towers; or
 - (3) Signs (other than signs attached to buildings).

3. Covered Causes of Loss

See applicable Causes of Loss Form as shown in the Declarations.

4. Additional Coverages

a. Debris Removal

- (1) We will pay your expense to remove debris of Covered Property caused by or resulting from

a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the earlier of:

- (a) The date of direct physical loss or damage; or
- (b) The end of the policy period.

- (2) The most we will pay under this Additional Coverage is 25% of:

- (a) The amount we pay for the direct physical loss of or damage to Covered Property; plus
- (b) The deductible in this policy applicable to that loss or damage.

But this limitation does not apply to any additional debris removal limit provided in the Limits of Insurance section.

- (3) This Additional Coverage does not apply to costs to:

- (a) Extracts "pollutants" from land or water; or
- (b) Remove, restore or replace polluted land or water.

b. Preservation of Property

If it is necessary to move Covered Property from the described premises to preserve it from loss or damage by a Covered Cause of Loss, we will pay for any direct physical loss or damage to that property:

- (1) While it is being moved or while temporarily stored at another location; and
- (2) Only if the loss or damage occurs within 10 days after the property is first moved.

c. Fire Department Service Charge

When the fire department is called to save or protect Covered Property from a Covered Cause of Loss, we will pay up to \$1,000 for your liability for fire department service charges:

- (1) Assumed by contract or agreement prior to loss; or
- (2) Required by local ordinance.

No deductible applies to this Additional Coverage.

d. Pollutant Clean Up and Removal

We will pay your expense to extract "pollutants" from land or water at the described premises if the release, discharge or dispersal of the "pollutants" is caused by or results from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the earlier of:

- (1) The date of direct physical loss or damage; or
- (2) The end of the policy period.

The most we will pay for each location under this Additional Coverage is \$10,000 for the sum of all such expenses arising out of Covered Causes of Loss occurring during each separate 12 month period of this policy.

5. Building Materials and Supplies of Others

- a. You may extend the insurance provided by this Coverage Form to apply to building materials and supplies that are:

- (1) Owned by others;
- (2) In your care, custody or control;
- (3) Located in or on the building described in the Declarations, or within 100 feet of its premises; and
- (4) Intended to become a permanent part of the building.

- b. The most we will pay for loss or damage under this Extension is \$2,500 at each described premises. Our payment for loss of or damage to property of others will only be for the account of the owner of the property.

This Extension is additional insurance.

B. EXCLUSIONS

See applicable Cause of Loss Form as shown in the Declarations

C. LIMITS OF INSURANCE

The most we will pay for loss or damage in any one occurrence is the applicable Limit of Insurance shown in the Declarations.

The most we will pay for loss or damage to outdoor signs attached to buildings is \$1,000 per sign in any one occurrence.

The limits applicable to the Coverage Extension and the Fire Department Service Charge and Pollutant Clean Up and Removal Additional Coverages are in addition to the Limits of Insurance.

Payments under the following Additional Coverages will not increase the applicable Limit of Insurance:

1. Preservation of Property; or
2. Debris Removal; but if:
 - a. The sum of direct physical loss or damage and debris removal expense exceeds the Limit of Insurance; or

- b. The debris removal expense exceeds the amount payable under the 25% limitation in the Debris Removal Additional Coverage;

we will pay up to an Additional \$5,000 for each location in any one occurrence under the Debris Removal Additional Coverage.

D. DEDUCTIBLE

We will not pay for loss or damage in any one occurrence until the amount of loss or damage exceeds the Deductible shown in the Declarations. We will then pay the amount of loss or damage in excess of the Deductible, up to the applicable Limit of Insurance.

E. LOSS CONDITIONS

The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions.

1. Abandonment

There can be no abandonment of any property to us.

2. Appraisal

If we and you disagree on the value of the property or the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property and amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and the umpire equally.

If there is an appraisal, we will still retain our right to deny the claim.

3. Duties In The Event of Loss or Damage

You must see that the following are done in the event of loss or damage to Covered Property:

- a. Notify the police if a law may have been broken.
- b. Give us prompt notice of the loss or damage. Include a description of the property involved.
- c. As soon as possible, give us a description of how, when and where the loss or damage occurred.
- d. Take all reasonable steps to protect the Covered Property from further damage by a Covered Cause of Loss. If feasible, set the damaged property aside and in the best possible order for examination. Also keep a record of your expenses for emergency and temporary repairs, for consideration in the settlement of the claim. This will not increase the Limit of Insurance.

- e. At our request, give us complete inventories of the damaged and undamaged property. Include quantities, costs, values and amount of loss claimed.
- f. Permit us to inspect the property and records proving the loss or damage.

Also permit us to take samples of damaged property for inspection, testing and analysis.
- g. If requested, permit us to question you under oath at such times as may be reasonably required about any matter relating to this insurance or your claim, including your books and records. In such event, your answers must be signed.
- h. Send us a signed, sworn statement of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.
- i. Cooperate with us in the investigation or settlement of the claim.

4. Loss Payment

- a. In the event of loss or damage covered by this Coverage Form, at our option, we will either:
 - (1) Pay the value of lost or damaged property;
 - (2) Pay the cost of repairing or replacing the lost or damaged property;
 - (3) Take all or any part of the property at an agreed or appraised value; or
 - (4) Repair, rebuild or replace the property with other property of like kind and quality.
- b. We will give notice of our intentions within 30 days after we receive the sworn statement of loss.
- c. We will not pay you more than your financial interest in the Covered Property.
- d. We may adjust losses with the owners of lost or damaged property if other than you. If we pay the owners, such payments will satisfy your claims against us for the owners' property. We will not pay the owners more than their financial interests in the Covered Property.
- e. We may elect to defend you against suits arising from claims of owners of property. We will do this at our expense.
- f. We will pay for covered loss or damage within 30 days after we receive the sworn statement of loss, if:
 - (1) You have complied with all of the terms of this Coverage Part; and
 - (2) (a) We have reached agreement with you on the amount of loss; or
(b) An appraisal award has been made.

5. Recovered Property

If either you or we recover any property after loss settlement, that party must give the other prompt notice. At your option, the property will be returned to you. You must then return to us the amount we paid to you for the property. We will pay recovery expenses and the expenses to repair the recovered property, subject to the Limit of Insurance.

6. Valuation

We will determine the value of Covered Property at actual cash value as of the time of loss or damage.

F. ADDITIONAL CONDITIONS

The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions.

1. Mortgage Holders

- a. The term "mortgage holder" includes trustee.
- b. We will pay for covered loss of or damage to buildings or structures to each mortgage holder shown in the Declarations in their order of precedence, as interests may be appear.
- c. The mortgage holder has the right to receive loss payment even if the mortgage holder has started foreclosure or similar action on the building or structure.
- d. If we deny your claim because of your acts or because you have failed to comply with the terms of this Coverage Part, the mortgage holder will still have the right to receive loss payment if the mortgage holder:
 - (1) Pays any premium due under this Coverage Part at our request if you have failed to do so;
 - (2) Submits a signed, sworn statement of loss within 60 days after receiving notice from us of your failure to do so; and
 - (3) Has notified us of any change in ownership, occupancy or substantial change in risk known to the mortgage holder.

All of the terms of this Coverage Part will then apply directly to the mortgage holder.

- e. If we pay the mortgage holder for any loss or damage and deny payment to you because of your acts or because you have failed to comply with the terms of this Coverage Part:
 - (1) The mortgage holder's rights under the mortgage will be transferred to us to the extent of the amount we pay; and
 - (2) The mortgage holder's right to recover the full amount of the mortgage holder's claim will not be impaired.

At our option, we may pay to the mortgage holder the whole principal on the mortgage plus any accrued interest. In this event your mortgage and note will be transferred to us and you will pay your remaining mortgage debt to us.

f. If we cancel this policy, we will give written notice to the mortgage holder at least:

- (1) 10 days before the effective date of cancellation if we cancel for your non-payment of premium; or
- (2) 30 days before the effective date of cancellation if we cancel for any other reason.

g. If we elect not to renew this policy, we will give written notice to the mortgage holder at least 10 days before the expiration date of this policy.

2. Need For Adequate Insurance

We will not pay a greater share of any loss than the proportion that the Limit of Insurance bears to the value on the date of completion of the building described in the Declarations.

Example No. 1 (Underinsurance):

When: The value of the building on the date of completion is	\$200,000
The Limit of Insurance for it is	\$100,000
The Deductible is	\$250
The amount of loss is	\$80,000

Step 1: $\$100,000 / \$200,000 = .50$

Step 2: $\$80,000 \times .50 = \$40,000$

Step 3: $\$40,000 - \$250 = \$39,750$

We will pay no more than \$39,750. The remaining \$40,250 is not covered.

Example No. 2 (Adequate Insurance):

When: The value of the building on the date of completion is	\$200,000
The Limit of Insurance for it is	\$200,000
The Deductible is	\$250
The amount of loss is	\$80,000

Step 1: $\$200,000 / \$200,000 = 1.00$

Step 2: $\$80,000 \times 1.00 = \$80,000$

Step 3: $\$80,000 - \$250 = \$79,750$

We will cover the \$79,750 loss in excess of the Deductible. No penalty applies.

3. Restriction of Additional Coverage - Collapse

If the Additional Coverage - Collapse is included in the Causes of Loss Form applicable to this coverage form, paragraph 6 of that Additional Coverage does not apply to this coverage form.

4. Waiver of Rights of Recovery Against Others

You may not waive your rights to recover damages from an architect, engineer or building trades contractor or subcontractor with respect to the described premises except as agreed to in writing by us. This provision supersedes any provisions to the contrary in the TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US Commercial Property Condition.

5. When Coverage Ceases

The insurance provided by this Coverage Form will end when one of the following first occurs:

- a. This policy expires or is cancelled;
- b. The property is accepted by the purchaser;
- c. Your interest in the property ceases;
- d. You abandon the construction with no intention to complete it;
- e. Unless we specify otherwise in writing:
 - (1) 90 days after construction is complete; or
 - (2) When any building described in the Declarations is:
 - (a) Occupied in whole or in part; or
 - (b) Put to its intended use.

G. DEFINITIONS

"Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

INSURANCE RESERVE FUND

By



Director

Sheri L. Wainscott

From: Robbie Ferris <RFerris@sfla.biz>
Sent: Tuesday, November 17, 2015 1:25 PM
To: Keith R. Powell
Cc: Clark, Brad (Brad.Clark@BBandT.com)
Subject: RE: HCS | Exhibit B

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Brad, Your thoughts.

From: Keith R. Powell [mailto:kpowell@childs-halligan.net]
Sent: Tuesday, November 17, 2015 1:22 PM
To: Robbie Ferris
Cc: Clark, Brad (Brad.Clark@BBandT.com)
Subject: RE: HCS | Exhibit B

Here are the forms. The BR policy talks about "your" property, but the IRF won't let HCS name a nongovernment entity as an insured or loss payee.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

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From: Robbie Ferris [mailto:RFerris@sfla.biz]
Sent: Tuesday, November 17, 2015 12:22 PM
To: Keith R. Powell
Cc: Clark, Brad (Brad.Clark@BBandT.com)
Subject: FW: HCS | Exhibit B

Keith,
Apparently our insurance company sent me an email about this a few days ago that I never sent you.
Sorry!!
Feel free to call Brad directly to discuss his concerns.
Robbie

Robbie/Mike,

After reviewing this updated draft, I still see the same potential problem areas as previously outlined. There are some significant gaps in the protection of First Floor and subcontractors with the language used for Builder's Risk coverage, specifically:

- Design-Builder and subcontractors of all tiers should have insured status on the Builder's Risk policy in order to ensure your interests are protected.
- HCS should agree to waive subrogation against First Floor and subcontractors of all tiers for losses covered by the Builder's Risk policy. This waiver will prevent HCS' insurer from seeking subrogation against First Floor's or a subcontractor's GL coverage if a contractor caused damage to the project.
- The contract states that HCS has the responsibility to pay losses not covered by deductibles, but the contract does not state anything regarding excluded perils, inadequate limits, or property not covered. These can all be significant exposures.
- Other areas as outlined in the attached "Builder's Risk Considerations".

Additional Insured status is still referenced for Pollution Liability coverage even though that coverage is not required by HCS. I recommend striking this language since First Floor is not required to carry Pollution Liability by HCS. As discussed previously, BB&T still recommends that you purchase Pollution Liability coverage to protect First Floor.

Thanks,

Brad Clark, CIC
Vice President
BB&T Insurance Services
4309 Emperor Blvd., Suite 300
Durham, NC 27703
919.281.4545 Direct
678.612.7403 Cell
brad.clark@bbandt.com
mailcode: 120-80-01-15

From: Peeples, Kenneth
Sent: November 17, 2015 10:30 AM
To: Blanchard, Kathy; Clark, Brad
Subject: Fwd: Hcs

Ken Peeples
919-281-4510 office
919-215-9779 cell
Via iPhone

Begin forwarded message:

From: Robbie Ferris <RFerris@sfla.biz>
Date: November 17, 2015 at 9:55:52 AM EST
To: Nancy Zabrud <NZabrud@sfla.biz>, Mike Wawrzyniak <mwawrzyniak@sfla.biz>, "Kenneth J. Peeples" <kpeeples@bbandt.com>, Aaron Thomas <athomas@metconus.com>, Mike Richter <mrichter@taloving.com>
Subject: Fwd: Hcs

Guys,
See attached exhibit B in the email from Keith Powell.
Robbie

Sent from my iPhone

Begin forwarded message:

From: "Keith R. Powell" <kpowell@childs-halligan.net>
Date: November 17, 2015 at 9:47:32 AM EST
To: "Robbie Ferris (RFerris@sfla.biz)" <RFerris@sfla.biz>, Mark Wolfe
<MWolfe002@horrycountyschools.net>, "Ara Heinz
(AHeinz@horrycountyschools.net)" <AHeinz@horrycountyschools.net>, John
Gardner <JGardner@horrycountyschools.net>, Kenneth Generette
<KGenerette@horrycountyschools.net>, "rmaxey@horrycountyschools.net"
<rmaxey@horrycountyschools.net>
Cc: "William F. Halligan" <bhalligan@childs-halligan.net>
Subject: RE: Hcs

Robbie & HCS folks:

Ex B updated draft attached for review & comment. Waiting on HCS comments on 141 and Ex A.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

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On Nov 17, 2015, at 7:43 AM, Robbie Ferris <RFerris@sfla.biz> wrote:

Keith

Can you send the latest version of the contract for review

Robbie

Sent from my iPhone

The information in this transmission may contain proprietary and non-public information of BB&T or its affiliates and may be subject to protection under the law. The message is intended for the sole use of the individual or entity to which it is addressed. If you are not the intended recipient, you are notified that any use, distribution or copying of the message is strictly prohibited. If you received this message in error, please delete the material from your system without reading the content and notify the sender immediately of the inadvertent transmission.

Sheri L. Wainscott

From: Keith R. Powell
Sent: Tuesday, November 17, 2015 2:18 PM
To: john.devlin@devlinparkinson.com
Subject: FW: Devlin & Parkinson

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

See below re your FOIA request.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

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From: Teal Britton [mailto:TBritton@horrycountyschools.net]
Sent: Tuesday, November 17, 2015 2:09 PM
To: Keith R. Powell
Cc: Teal Britton; Ara Heinz; Edward Boyd; Susan Johnson; Rick Maxey; John Gardner; Kenneth Generette
Subject: Devlin & Parkinson

Keith,

Below is a public (yet unpublished) link to the Google Drive where we are warehousing the most recent FOIA requests relative to our current construction program. I believe this link provides all the information requested by Mr. John Devlin of Devlin & Parkinson, P.A., with the exception of the emails. We are currently reviewing emails that were collected in our search and will forward you those that are applicable to the request. Afterwards, you may review the emails for any applicable attorney-client privilege and can conclude Mr. Devlin's FOIA request.

Feel free to provide Mr. Devlin access to the Google Drive. You had mentioned us providing you a thumb drive with the documents, but this way you can copy what you want and the drive is always current.

https://drive.google.com/a/g.horrycountyschools.net/folderview?id=0BwKrFyIowwgnCENsbHhvUEhLbKU&usp=sharing_eid&ts=563cc83e#

Let me know if you have questions.

Teal

Sheri L. Wainscott

From: Keith R. Powell
Sent: Tuesday, November 17, 2015 2:43 PM
To: William F. Halligan
Subject: FW: Devlin & Parkinson

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

From: Keith R. Powell
Sent: Tuesday, November 17, 2015 2:18 PM
To: john.devlin@devlinparkinson.com
Subject: FW: Devlin & Parkinson

See below re your FOIA request.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

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From: Teal Britton [<mailto:TBritton@horrycountyschools.net>]
Sent: Tuesday, November 17, 2015 2:09 PM
To: Keith R. Powell
Cc: Teal Britton; Ara Heinz; Edward Boyd; Susan Johnson; Rick Maxey; John Gardner; Kenneth Generette
Subject: Devlin & Parkinson

Keith,

Below is a public (yet unpublished) link to the Google Drive where we are warehousing the most recent FOIA requests relative to our current construction program. I believe this link provides all the information requested by Mr. John Devlin of Devlin & Parkinson, P.A., with the exception of the emails. We are currently reviewing emails that were collected in our search and will forward you those that are applicable to the request. Afterwards, you may review the emails for any applicable attorney-client privilege and can conclude Mr. Devlin's FOIA request.

Feel free to provide Mr. Devlin access to the Google Drive. You had mentioned us providing you a thumb drive with the documents, but this way you can copy what you want and the drive is always current.

https://drive.google.com/a/g.horrycountyschools.net/folderview?id=0BwKrFyIowwgncENSbHhvUEhLbKU&usp=sharing_eid&ts=563cc83e#

Let me know if you have questions.

Teal

Sheri L. Wainscott

From: Keith R. Powell
Sent: Wednesday, November 25, 2015 12:11 PM
To: 'Nancy Zabloud'
Subject: RE: Executed Horry County Contracts A141, Exhibit A and Exhibit B
Attachments: SES Ex A - Final - (1).pdf; SES ex B - Final - (1).pdf; SMS ex B - Final - (1).pdf; SJIS ex B - Final - (1).pdf; MBM ex B - Final - (1).pdf; SJIS ex A - Final - (1).pdf; SMS ex A - Final - (1).pdf; MBM Ex A - Final - (1).pdf; SMS 141 - Final - (1).pdf; SJIS 141 - Final - (1).pdf; SES 141 - Final - (1).pdf; MBMS 141 - Final - (1).pdf; 673449 EX A - Final - (1).pdf; a141 ffep - Final - (1).pdf; EX B v2 - Final - (1)(1).pdf

Follow Up Flag: Follow up
Flag Status: Flagged

This should be all of it (3 per project). The only one possibly off is CFMS exhibits, because on my remote connection today I can't check them. All the rest I know are right, so you can rely on the same language for CFMS. These are as printed and checked by Sam & Robbie on Monday.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

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From: Nancy Zabloud [<mailto:NZabloud@sfla.biz>]
Sent: Tuesday, November 24, 2015 12:09 PM
To: Keith R. Powell
Subject: Executed Horry County Contracts A141, Exhibit A and Exhibit B

Hi Keith,

When you have a moment, could you please forward the executed copy of the entire contract with Exhibit A and B. This will allow me to continue with the A143 and C441 to ensure I have all the final language.

Thanks so much.



Nancy Zabloud, CPA CGMA MBA
Controller
Capital Bank Plaza

333 Fayetteville Street, Suite 225
Raleigh, NC 27601
Main: 919-573-6350
Cell: 919-818-2879
Fax: 919-573-6355
nzablud@sfla.biz
www.sfla.biz

From: Robbie Ferris
Sent: Tuesday, November 17, 2015 9:56 AM
To: Nancy Zablud; Mike Wawrzyniak; Kenneth J. Peeples; Aaron Thomas; Mike Richter
Subject: Fwd: Hcs

Guys,
See attached exhibit B in the email from Keith Powell.
Robbie

Sent from my iPhone

Begin forwarded message:

From: "Keith R. Powell" <kpowell@childs-halligan.net>
Date: November 17, 2015 at 9:47:32 AM EST
To: "Robbie Ferris (RFerris@sfla.biz)" <RFerris@sfla.biz>, Mark Wolfe
<MWolfe002@horrycountyschools.net>, "Ara Heinz (AHeinz@horrycountyschools.net)"
<AHeinz@horrycountyschools.net>, John Gardner <JGardner@horrycountyschools.net>,
Kenneth Generette <KGenerette@horrycountyschools.net>, "rmaxey@horrycountyschools.net"
<rmaxey@horrycountyschools.net>
Cc: "William F. Halligan" <bhalligan@childs-halligan.net>
Subject: RE: Hcs

Robbie & HCS folks:

Ex B updated draft attached for review & comment. Waiting on HCS comments on 141 and Ex A.

Keith R. Powell
Childs & Halligan, P.A.
Columbia, South Carolina
www.childs-halligan.com
(803) 254-4035

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On Nov 17, 2015, at 7:43 AM, Robbie Ferris <RFerris@sfla.biz> wrote:

Keith

Can you send the latest version of the contract for review

Robbie

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